

# THE STRUCTURAL PEST CONTROL BOARD

## JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE 1999 REPORT SUBMITTED TO THE DEPARTMENT OF CONSUMER AFFAIRS

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*Four Year Overview of the Board's Regulatory Program,  
Board's Response to Issues and Recommendations from  
Prior 1996 Review, and Background Paper for the  
1999 Sunset Review Hearing*

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# **PART 1.**

## **STRUCTURAL PEST CONTROL BOARD**

### **BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM**

#### **BACKGROUND AND DESCRIPTION OF THE BOARD AND PROFESSION**

##### ***Short Explanation of the History and Function of the Board***

The profession of pest control deals in areas outside the realm of common experience centering as it must on the esoteric areas of entomology, toxicology, and structural integrity. Pest control is a field where success is quantified by a “kill-ratio.” And though the term is applied to some housemates such as rodents and other annoying, often disease carrying creatures, the purpose of enforcement is to confine the “kill-ratio” to those creatures rather than to humans who inhabit or work in that same dwelling.

Structural pest control is a field whose history is fraught with chicanery and totems. The pest control industry in 1934 perceived the danger to itself and to the consumer in the lack of regulation and risks inherent in the very work itself. As the history shows, the regulation was not intended to limit fair competition in the market place but rather to protect the consumer and those working in the industry. As a result, the Structural Pest Control Board (SPCB) was created in 1935.

The opinion is uniform that regulation in the industry save lives and protects property. The stakes in a non-regulated environment are particularly high. Pesticides and deadly gases misapplied or misused are harmful to the human body and result in well documented health consequences which include death and severe long term health problems.

The financial stake for the consumer who seeks to avail himself of the services of a pest control company is the costly business of repair of the primary asset of most Californians, their home. When that work is performed in a sub-standard, incompetent or grossly negligent manner, somehow the dream begins to fade along with the savings account of the homeowner. Therefore, while the subject of pest

control appears at first blush banal, it is an industry which touches the very places where we all live.

The Structural Pest Control Act provides for the licensing and regulation of structural pest control operators, field representatives, and applicators and the registration of structural pest control companies by the Board. The primary function of the Board is to protect the consumer as it relates to structural pest control by licensing practitioners of pest control services and addressing complaints filed by consumers against a pest control company through mediation and enforcement of the Structural Pest Control Act.

Licensees practice structural pest control with respect to household pests and wood destroying pests and organisms, or such other pests which may invade households or other structures, including railroad cars, ships, docks, trucks, airplanes, or the contents thereof. The practice may also include the engaging in, offering to engage in, advertising for, soliciting, or the performance of any of the following: identification of infestations or infections of households or other structures by such pests or organisms. Licensees may make inspections, inspection reports and recommendations, estimates and bids with respect to such infestations or infections. They may also make contracts, submit bids for, or the performance of any work including the making of structural repairs or the use of insecticides, pesticides, rodenticides, fumigants or allied chemicals for the purpose of eliminating, exterminating, controlling or preventing infestations or infections of such pests or organisms.

### **Current Composition of the Board**

The board is composed of seven (7) members, of which four (4) are public members and three (3) are professional members. The following individuals comprise the Structural Pest Control Board:

Glenn Hellyer (public member)	Term expires June 1, 2000	Assembly Appt.
Ken Moore (industry member)	Term expires June 15, 2000	Governor Appt.
Ken Trongo (industry member)	Term expires June 1, 2001	Governor Appt.
Carl Doucette (industry member)	Term expires June 1, 1999	Governor Appt.
Nick Papadakis (public member)	Term expires June 1, 2001	Governor Appt.
Theodora Polohnis-Engen(public member)	Term expires June 1, 2000	Senate Appt.
(Vacant position)	Term expires June 1, 2001	Governor Appt.

### **Regulation and Scope of Practice of Board Licensees**

The Board licenses and regulates over 25,000 individuals involved in the structural pest control industry. The Board also sets standards and minimum requirements and training for licensure. The Board also administers various examinations, mediates and investigates complaints against licensees and takes disciplinary action against those licensees for violations of the law. In addition, the Board provides information about its licensees and its administrative responsibilities to the public, consumers and others.

The structural pest control scope of practice is defined in the Business and Professions Code Section 8505. By application and examination, structural pest control operators and field representatives may be licensed in as many as four of the specified areas of pest control listed below. Applicators may be licensed in all areas except Branch 1. All companies and their branch offices must be registered by the Board.

Branch 1 – Fumigation. The control of household and wood destroying pests or organisms by fumigation.

Branch 2 – General Pest. The control of household pests, but excludes fumigation.

Branch 3 – Termite. The control of wood destroying pest or organisms by use of insecticides and pesticides, or structural repairs and corrections, excluding fumigation.

Wood Roof Cleaning and Treatment – The inspection for wood destroying organisms, cleaning and application of wood preservatives to wood shake or shingle roofs.

### **Major changes to the Board since the last Sunset Review**

During the last Sunset Review, one of the recommendations was to attempt to find a way to eliminate the filing of wood destroying pest and organisms inspection reports (commonly called termite inspection reports) with the Board. As was pointed out by the previous Sunset Review Committee, the Board receives approximately 8000 reports per day which are imaged for retrieval purposes. Following two years of committee meetings, the Board determined that the reports could be replaced by a short activity form. All of the necessary statutory changes are addressed in SB1307 which, by the time this report is delivered, will be on the

Governor's desk for signature. Once the legislation is chaptered, the measure would become effective on January 1, 2000. Following are some additional Board highlights:

- The Board has completed a Strategic Plan, which is updated annually. The Plan establishes goals and objectives for all of the Board's operations.
- In 1996, the Board began the process of conducting Occupational Analyses to review and update the entire examination process for all branch licenses.
- In May 1997, the Joint Legislative Sunset Review Committee recommended that the Board expand its licensee office records inspection program. Since that time, nearly 1500 office records inspections have been conducted.
- In 1998, a cite and fine program was adopted into regulation. The cite and fine program allows the Board to issue citations and fines for violations of the Structural Pest Control Act.
- The Board re-instituted the quarterly newsletter. The Board also created a Web site, updated existing brochures, and created one new additional brochure for the consumer.

### **Licensing Data**

There are approximately 25,000 structural pest control licensees of the Board in FY 1998/99. The following provides licensing data for the past four years:



LICENSING DATA FOR STRUCTURAL PEST CONTROL	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
<b>Total Licensed California</b>	*OPR – 2595 **FR - 8677 ***APP- 8241	OPR - 2571 FR - 9454 APP - 9461	OPR - 2602 FR - 9602 APP- 12,014	OPR - 2729 FR - 9443 APP - 12,903
<b>Applications Received</b>	No Stats	No Stats	No Stats	No Stats
<b>Applications Denied</b>	5	3	4	10
<b>Total Licenses Issued</b>	OPR - 130 FR - 1419 APP - 2346	OPR - 172 FR - 1302 APP - 3289	OPR - 165 FR - 2273 APP - 2461	OPR - 120 FR - 1293 APP - 2247
<b>Renewals Issued</b>	OPR – 763 FR - 1626	OPR - 771 FR - 1642	OPR - 806 FR - 1844	OPR - 779 FR - 1729
<b>Statement of Issues Filed</b>	Total: 2	Total: 7	Total: 2	Total: 6
<b>Statement of Issues Withdrawn</b>	Total: 0	Total: 0	Total: 0	Total: 0
<b>Licenses Denied</b>	Total: 8	Total: 2	Total: 3	Total: 2
<b>Licenses Granted</b>	Total: 7	Total: 4	Total: 1	Total: 1
* OPR - Operator                      ** FR - Field Representative                      *** APP - Applicator				

## BUDGET AND STAFF

### *Current Fee Schedule and Range*

The primary source of revenue to the Board is through the sale of stamps that must be placed on every pest control inspection report and notice of work completed submitted to the board. The examination and licensing fees account for very little of the overall revenue. Currently the examination fees do not cover the cost to administer the examinations.

Renewal for licensure is required every three years. While there are no plans to increase the stamp fees, the Board has been reviewing the need to increase the examination fees. The costs to administer the examinations has increased further, the cost to develop the Occupational Analysis and create new and validated exams has also added to and increased the costs of administering the licensing exams. For example, the determined cost to administer the Field Representative exam is \$34.07. The cost to an applicant is \$10.00. Currently, under statute, all of the fees for examinations are capped and the Board has reach the statutory limit with regard to raising examination fees.

Fee Schedule	Current Fee	Statutory Limit
Application Fee	NA	
Exam Fee		
OPERATOR	\$25	\$25
*FIELD REPRESENTATIVE	\$10	\$15
APPLICATOR	\$15	\$15
Admin. Fee	NA	
Original License Fee		
OPERATOR	\$150	\$150
FIELD REPRESENTATIVE	\$30	\$45
APPLICATOR	\$0	\$50
Renewal Fee		
OPERATOR	\$150	\$150
FIELD REPRESENTATIVE	\$30	\$45
APPLICATOR	\$0	\$50
*This fee will reach the statutory limit due to proposed regulatory changes.		

### **Structural Pest Control Board Budgets**

The Structural Pest Control Board has four funds. They are the Support Fund (main fund), the Education and Enforcement Fund, the Research Fund, and the Device Fund.

The Support Fund is the primary fund for the Board. The history of the fund has not changed very much over the years. The Board has always been able to “live” within its means relative to the funds allocated every fiscal year. At no time, at least in the past seven years, has the Board been forced to curb any enforcement activities (including discipline) due to budget shortfalls. The Strategic Plan has helped a great deal in providing for long-term planning. If a goal of the Board is determined to be too costly or will impact the existing funds or harm an on-going program, then generally the Board will prepare for that eventuality through the BCP process. The Board currently believes that the funding for enforcement is adequate.

The reserve levels have fluctuated from time to time. If it is determined that the reserve level is too high, then the Board, through a regulatory change will decrease the “stamp” fee. If the levels fall too low, then the Board through the same method will increase the cost to purchase stamps. Over the past four years the reserve levels have increased. This is directly linked to the revenue levels increasing. It is important to understand that the business of pest control is a business that can fluctuate over time. Those fluctuations are due in part to the nature of the economy. If the housing market is booming, then the pest control industry is booming. If the housing market falls, so will the business of pest control. Good

economic times, especially these last two years, are reflected in the increased revenue.

One of the major difficulties for Boards in general are trying to determine what is an acceptable reserve level. In the last four years, the Department has suggested reserve levels ranging from 3 months to as high as 12 months.

The Education and Enforcement fund is supported by the purchase of a pesticide use stamp. The cost for the stamp is \$6. Four dollars of the six goes to this program. The majority of those dollars are allocated to fund the Memorandum of Understanding between the Board, the Department of Pesticide Regulation and the County Agricultural Commissioners for enforcement as it relates to pesticide use in the structural pest control industry.

The Research Fund is funded by \$2.00 of the \$6.00 from the pesticide use stamp. This fund was created statutorily and is continuously appropriated for research projects in the field of pest control.

The Device Fund was also established by statute and provides that \$00.25 from the wood destroying pests and organisms and notice of work completed stamp fee would be used as a funding appropriation to the Department of Pesticide Regulation for regulating (registering) new devices for use in structural pest control.

## Support Fund

### Support Fund Revenues

Effective January 1, 1997, the Board reduced fees for the "Notice of Work Completed" stamp and the "Inspection Report" stamp as a means of reducing the reserve level in its Support Fund. This same year the Board received a partial repayment of the *Malibu/Abramovitz Lawsuit*, which offset the majority of the revenue decrease to the fund. Although FY 97/98 was the first full year with these two stamp fee reductions, overall revenues from fees continued to increase by approximately 3%. In FY 98/99 revenues from fees again increased by approximately 5%, in addition to the fund receiving a significant partial repayment of the *Malibu/Abramovitz*

REVENUES	ACTUAL				PROJECTED	
	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
<b>Licensing Fees</b>	\$362,263	\$362,446	\$391,427	\$335,831	\$363,629	\$363,629
<b>Stamp Fees</b>	\$2,641,064	\$2,282,310	\$2,348,768	\$2,556,331	\$2,556,331	\$2,556,331
<b>Fines &amp; Penalties</b>	\$9,250	\$32,900	\$16,200	\$114,650	\$30,000	\$30,000
<b>*Other</b>	\$0	\$190,699	\$0	\$599,235	\$0	\$179,696
<b>Interest</b>	\$156,404	\$168,468	\$153,900	\$170,821	\$195,004	\$193,830
<b>TOTALS</b>	\$3,168,981	\$3,036,823	\$2,910,295	\$3,776,868	\$3,144,964	\$3,323,486

*Lawsuit.* 1/1/97 stamp fees decreased from \$2 to \$1.50.

\*Malibu/Abramovitz payments

### Support Fund Expenditures

Between FY 95/96 and FY 98/99, the Structural Pest Control Support budget has increased less than 2% overall. By FY 00/01, the budget is projected to increase by \$625,000 as a result of the following factors:

- \$239,000 in one-time funding for ICPS
- \$275,000 to fund a proposed BCP for ongoing exam maintenance
- \$27,000 to fund a proposed BCP as a result of higher worker's compensation insurance rates
- \$84,000 the difference in total reimbursements scheduled

EXPENDITURES	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Personnel Services	\$1,187,314	\$1,333,719	\$1,395,144	\$1,376,746	\$1,420,879	\$1,454,879
Operating Expenses	\$1,638,070	\$1,722,626	\$1,774,667	\$1,558,139	\$1,595,213	\$2,023,076
(-) Reimbursements	-\$25,390	-\$36,172	-\$55,739	-\$84,134	-\$2,000	-\$2,000
(-) Distributed Costs						
<b>TOTALS</b>	<b>\$2,799,994</b>	<b>\$3,020,173</b>	<b>\$3,114,072</b>	<b>\$2,850,751</b>	<b>\$3,014,092</b>	<b>\$3,475,955</b>

### Support Fund Expenditures by Program Component

The Program spends the majority of its operating budget on enforcement-related activities, followed by 22% for administrative functions and 21% for licensing functions. The Program presently spends only 4% on its examination-related activities; however, as previously noted, the Program recently submitted a BCP for \$275,000 to fund ongoing examination maintenance (occupational analysis/exam

EXPENDITURES BY PROGRAM COMPONENT	FY 95-96	FY 96-97	FY 97-98	FY 98-99	Average % Spent by Program
Enforcement	\$1,436,828	\$1,794,179	\$1,667,200	\$1,408,968	53%
Examination	\$95,095	\$105,024	\$144,362	\$153,290	4%
Licensing	\$532,728	\$581,942	\$706,802	\$714,285	21%
Administrative	\$760,733	\$575,200	\$651,467	\$658,342	22%
Diversion (If Apply)					
<b>TOTALS</b>	<b>\$2,825,384</b>	<b>\$3,056,345</b>	<b>\$3,169,831</b>	<b>\$2,934,885</b>	

validation) activities.

### Support Fund Analysis of Fund Condition

At the end of FY 97/98, the "months in reserve" in the Board's Support Fund

decreased from the previous fiscal year from 14 months to 11.7 as a result of two stamp fee decreases effective January 1, 1997. In FY 98/99 this reserve balance increased due to receiving a significant repayment from the *Malibu/Abramovitz Lawsuit* (\$599,235). In FY 00/01 this reserve balance will once again increase due to the final repayment of *Malibu/Abramovitz Lawsuit* (\$179,696). Beginning in FY 01/02, the fund's "months in reserve" balance is projected to once again decrease through FY 02/03, to end up with a total of 13 months in reserve at the end of that year.

<b>Education &amp; Enforcement Fund</b>
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ANALYSIS OF FUND CONDITION	FY 97-98	FY 98-99	FY 99-00 (Budget Yr)	FY 00-01 (Projected)	FY 01-02 (Projected)	FY 02-03 (Projected)
Total Reserves, July 1	\$2,971,558	\$2,769,257	\$3,836,371	\$3,960,851	\$3,795,280	\$3,690,905
Total Rev. & Transfers	\$2,911,771	\$3,917,865	\$3,138,572	\$3,310,384	\$3,125,717	\$3,120,499
Total Resources	\$5,883,329	\$6,687,122	\$6,974,943	\$7,271,235	\$6,920,997	\$6,811,404
Total Expenditures	\$3,114,072	\$2,850,751	\$3,014,092	\$3,475,955	\$3,230,092	\$3,230,092
Reserve, June 30	\$2,769,257	\$3,836,371	\$3,960,851	\$3,795,280	\$3,690,905	\$3,581,312
<b>MONTHS IN RESERVE</b>	11.7	15.3	13.7	14.1	13.7	13.3

### Education & Enforcement Fund Revenues

Revenues are received from a \$4 fee charged for each "use" stamp purchased from the Board. From FY 95/96 to FY 98/99, revenues from licensing fees have increased a total of 14%. Revenues for FY 99/00 and FY 00/01 are projected to increase an additional 4% annually.

REVENUES						
	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
<b>Stamp Fees</b>	\$164,172	\$175,380	\$184,757	\$188,145	\$191,908	\$195,746
<b>Fines &amp; Penalties (Ag)</b>	\$69,060	\$53,800	\$45,707	\$55,328	\$50,000	\$50,000
<b>Other</b>						
<b>Interest</b>	\$13,291	\$14,067	\$20,684	\$22,007	\$11,925	\$11,108
<b>TOTALS</b>	\$246,523	\$243,247	\$251,148	\$265,480	\$253,833	\$256,854

### Education & Enforcement Fund Expenditures

The Board's total expenditures for FY 95/96 and FY 96/97 of approximately \$200,000 each year were used to fund an interagency agreement with the Department of Pesticide Regulation (DPR) to enforce pesticide use violations. Beginning in FY 97/98, the Board's appropriation was increased by \$65,000 to

increase its interagency agreement with DPR to conduct enforcement activities for the Board. In FY 99/00, the Board obtained position authority to redirect a portion of its appropriation to personal services to fund a position to function as an interagency liaison with DPR. This position was previously maintained at the Department of Pesticide Regulations (DPR) and was funding by the Structural Pest Control Board.

EXPENDITURES	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Personnel Services					\$52,571	\$52,571
Operating Expenses	\$190,944	\$200,166	\$268,260	\$269,642	\$221,429	\$221,429
(-) Reimbursements						
(-) Distributed Costs						
<b>TOTALS</b>	\$190,944	\$200,166	\$268,260	\$269,642	\$274,000	\$274,000

### Education & Enforcement Fund Analysis of Fund Condition

Between fiscal year 97/98 and 98/99 the fund's "months in reserve" increased from 9.5 months to 11.9. However, in FY 99/00 the Board projects this balance to reduce to 11 months, and by FY 02/03 this balance is projected to be 9.2 months.

ANALYSIS OF FUND CONDITION	FY 97-98	FY 98-99	FY 99-00 (Budget Yr)	FY 00-01 (Projected)	FY 01-02 (Projected)	FY 02-03 (Projected)
Total Reserves, July 1	\$233,236	\$216,124	\$270,590	\$250,423	\$233,277	\$219,385
Total Rev. & Transfers	\$251,148	\$324,108	\$253,833	\$256,854	\$260,108	\$263,606
Total Resources	\$484,384	\$540,232	\$524,423	\$507,277	\$493,385	\$482,991
Total Expenditures	\$268,260	\$269,642	\$274,000	\$274,000	\$274,000	\$274,000
Reserve, June 30	\$216,124	\$270,590	\$250,423	\$233,277	\$219,385	\$208,991
<b>MONTHS IN RESERVE</b>	9.5	11.9	11.0	10.2	9.6	9.2

### Research Fund

#### Research Revenues

Revenues are derived from the pesticide use stamp. Two dollars of the six dollars goes to the research fund. From FY 95/96 to FY 98/99 the revenues have increased a total of 13%. In FY 99/00 and FY 00/01 the Board projects this revenue to increase approximately 5% annually.

REVENUES						
	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Stamp Fees	\$82,701	\$87,500	\$88,304	\$93,054	\$97,661	\$102,543
Fines & Penalties						
Other						
Interest	\$19,316	\$23,439	\$28,632	\$29,246	\$19,616	\$8,224
<b>TOTALS</b>	<b>\$102,017</b>	<b>\$110,939</b>	<b>\$116,936</b>	<b>\$122,300</b>	<b>\$117,277</b>	<b>\$110,767</b>

### Research Expenditures

This fund is continuously appropriated. The reserve balance tends to fluctuate as monies are allocated to fund research projects.

EXPENDITURES	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Personnel Services						
Operating Expenses	\$0	\$50,000	\$380,623	\$1,675	\$1,500	\$350,000
(-) Reimbursements						
(-) Distributed Costs						
<b>TOTALS</b>	<b>\$0</b>	<b>\$50,000</b>	<b>\$380,623</b>	<b>\$1,675</b>	<b>\$1,500</b>	<b>\$350,000</b>

### Research Analysis of Fund Condition

Due to the continuous appropriation of this fund, the reserve balance is subject to significant fluctuations from one year to the next. Typically the Board will utilize approximately \$350,000 every third year to contract for research.

Two dollars for every six dollars for the pesticide use stamp goes into the Research Fund. The annual revenue for that fund is about \$88,000. The use of those funds are for research grants provided to researchers in the field of structural pest control. The Board does not allocate those funds every single year. The Board must decide what areas of research need to be funded. Once that is determined then the RFP's must be written, and placed in the public domain. When the project bids come back to the Board, the Research Advisory Panel (statutorily created panel) must determine which of the projects will be recommended to the Board for approval. Once the Board approves the projects (s), contract(s) must be drawn and, as with any state contract, go through the approval process of all the various control agencies. The Board generally, submits RFP's when there are substantial funds available, for worthwhile projects. For example, in 97-98 the Board funded nearly \$400,000 for research. A research project can range from one to two years. In 97-98 monies were provided to the University of California, Berkeley; the University of California, Riverside, UCB, Forest Products Lab and Stanford University. It is

projected that by June 30, 2000, the fund will be at about \$400,000. If that is born out, there will be some grants provided in 00-01. It should be noted that it was the industry itself that developed the concept of using their money (part of the fees paid to the Board) to fund research projects in structural pest control. The Association developed and carried the legislation. Since 1994, nearly 1.1 million dollars have been granted by the Board for structural pest control research.

ANALYSIS OF FUND CONDITION	FY 97-98	FY 98-99	FY 99-00 (Budget Yr)	FY 00-01 (Projected)	FY 01-02 (Projected)	FY 02-03 (Projected)
Total Reserves, July 1	\$439,226	\$175,539	\$296,164	\$411,941	\$172,708	\$292,822
Total Rev. & Transfers	\$116,936	\$122,300	\$117,277	\$110,767	\$121,614	\$133,273
Total Resources	\$556,162	\$297,839	\$413,441	\$522,708	\$294,322	\$426,095
Total Expenditures	\$380,623	\$1,675	\$1,500	\$350,000	\$1,500	\$1,500
Reserve, June 30	\$175,539	\$296,164	\$411,941	\$172,708	\$292,822	\$424,595
<b>MONTHS IN RESERVE</b>	N/A Fund Continuously Appropriated					

### **\*DEVICE FUND**

#### **Device Revenues**

The Device Fund (AB 1134) was created effective January 1, 1999. Revenues deposited into this fund are received from an additional twenty-five cent (\$0.25) fee for each "Inspection Report" stamp and "Notice of Work Completed" stamp purchased from the Board. The Board sold a total of 913,660 stamps during the last six months of FY 98/99, and projects a total of 1,800,000 annually in FY 99/00 through FY 01/02. This Fund is scheduled to sunset effective January 1, 2002.

REVENUES						
	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Stamp Fees				\$228,415	\$450,000	\$450,000
Fines & Penalties						
Other						
Interest					\$11,355	\$11,923
<b>TOTALS</b>				\$228,415	\$461,355	\$461,923

\*This fund is the result of legislation promulgated by the Pest Control Operators of California, Inc. (PCOC).

#### **Device Analysis of Fund Condition**

The Department of Pesticide Regulation (DPR) has continuous appropriation authority for all funds received. Since this fund was established less than a year



ago, the expenditures and revenue received to date represent only six months of activity. The Board is estimating DPR's current year and ongoing expenditures to be approximately \$450,000.

ANALYSIS OF FUND CONDITION	FY 97-98	FY 98-99	FY 99-00 (Budget Yr)	FY 00-01 (Projected)	FY 01-02 (Projected)	FY 02-03 (Projected)
Total Reserves, July 1			\$227,104	\$238,459	\$250,382	
Total Rev. & Transfers			\$461,355	\$461,923	\$462,519	
Total Resources		\$228,415	\$688,459	\$700,382	\$712,901	
Total Expenditures		\$1,311	\$450,000	\$450,000	\$450,000	
Reserve, June 30		\$227,104	\$238,459	\$250,382	\$262,901	
<b>MONTHS IN RESERVE</b>	N/A Fund Continuously Appropriated for use by DPR					

## LICENSURE REQUIREMENTS

### *Education, Experience and Examination Requirements*

#### APPLICATOR

#### Branch 2 & 3

Education – None

Experience – None

Examination – Must successfully pass written examination with score of 70% or better. The examination will ascertain that an applicant has sufficient knowledge in pesticide equipment, pesticide mixing and formulation, pesticide application procedures and pesticide label directions.

#### Wood Roof Cleaning and Treatment

Education – None

Experience – None

Examination – Must successfully pass written examination with score of 70% or better. The examination will ascertain that an applicant has sufficient knowledge of wood preservative application equipment, wood preservative application procedures, mixing and formulation and wood preservative label directions.

## FIELD REPRESENTATIVE

### Branch 1

Education – None

Experience – Six months' training and experience in the practice of fumigating with poisonous or lethal gases under the immediate supervision of an individual licensed to practice fumigating. Of this six months' experience, a minimum of 100 hours of training and experience must be in the area of preparation, fumigation, ventilation, and certification.

Examination – Must successfully pass written examination with score of 70% or better. The examination will ascertain that an applicant is qualified in the use and understanding of the safety laws of the state, provisions of the Structural Pest Control Act, poisonous and other dangerous chemicals used in pest control, the theory and practice of pest control, and other state laws, safety or health measures, or practices as are reasonable within the scope of structural pest control.

### Branch 2

Education – None

Experience – A minimum of 40 hours of training and experience in the practice of pesticide application, Branch 2 pest identification and biology, pesticide application equipment, and pesticide hazards and safety practice, of which 20 hours are actual field work.

Examination – Must successfully pass written examination with score of 70% or better. The examination will ascertain that an applicant is qualified in the use and understanding of the safety laws of the state, provisions of the Structural Pest Control Act, poisonous and other dangerous chemicals used in pest control, the theory and practice of pest control, and other state laws, safety or health measures, or practices as are reasonable within the scope of structural pest control.

### Branch 3

Education – None

Experience – A minimum of 100 hours of training and experience in the practice of pesticide application, Branch 3 pest identification and biology, pesticide application equipment, pesticide hazards and safety practices, structural repairs, and

structural inspection procedures and report writing, of which 80 hours are actual field work.

Examination – Must successfully pass written examination with a score of 70% or better. The examination will ascertain that an applicant is qualified in the use and understanding of the safety laws of the state, provisions of the Structural Pest Control Act, poisonous and other dangerous chemicals used in pest control, the theory and practice of pest control, and other state laws, safety or health measures, or practices as are reasonable within the scope of structural pest control.

### Wood Roof Cleaning and Treatment

Education – None

Experience – Experience and training in the practice of identification of wood destroying organisms and non-decay fungi on wood shake or shingle roofs, wood preservative application equipment, wood preservative hazards and safety practices, wood shake or shingle roof inspection procedures and report writing.

Examination – Must successfully pass written examination with score of 70% or better. The examination will ascertain that an applicant is qualified in the use and understanding of the safety laws of the state, provisions of the Structural Pest Control Act, poisonous and other dangerous chemicals used in pest control, the theory and practice of pest control, and other state laws, safety or health measures, or practices as are reasonable within the scope of structural pest control.

## OPERATOR

### Branch 1

Education – Successful completion of board-approved course in the areas of pesticides, pest identification and biology, contract law, rules and regulations, business practices, and fumigation safety.

Experience – Two years' actual experience in the practice relating to the control of household and wood destroying pests or organisms by fumigation with poisonous or lethal gases.

Examination – Must successfully pass written examination with a score of 70% or better. The examination will ascertain that the applicant is qualified in the use and understanding of the English language, including reading, writing, and spelling, the building and safety laws of the state and any of its political subdivisions, the labor laws of the state, the provisions of the Structural Pest Control Act, poisonous and

other dangerous chemicals used in pest control, the theory and practice relating to the control of household and wood destroying pests or organisms by fumigation with poisonous or lethal gases, and other state laws, safety or health measures, or practices that are reasonably within the scope of structural pest control, including an applicant's knowledge of the requirements regarding health effects and restrictions.

## Branch 2

Education – Successful completion of board-approved course in the areas of pesticides, pest identification and biology, contract law, rules and regulations, and business practices.

Experience – Two years' actual experience in the practice relating to the control of household pests, excluding fumigation with poisonous or lethal gases.

Examination – Must successfully pass written examination with a score of 70% or better. The examination will ascertain that the applicant is qualified in the use and understanding of the English language, including reading, writing, and spelling, the building and safety laws of the state and any of its political subdivisions, the labor laws of the state, the provisions of the Structural Pest Control Act, poisonous and other dangerous chemicals used in pest control, the theory and practice relating to the control of household pests, and other state laws, safety or health measures, or practices that are reasonably within the scope of structural pest control, including an applicant's knowledge of the requirements regarding health effects and restrictions.

## Branch 3

Education – Successful completion of board-approved course in the areas of pesticides, pest identification and biology, contract law, rules and regulations, business practices, and construction repair and preservation techniques.

Experience – Four years' actual experience in the practice relating to the control of wood destroying pests or organisms by the use of insecticides, or structural repairs and corrections, excluding fumigation with poisonous or lethal gases.

Examination – Must successfully pass written examination with a score of 70% or better. The examination will ascertain that the applicant is qualified in the use and understanding of the English language, including reading, writing, and spelling, the building and safety laws of the state and any of its political subdivisions, the labor laws of the state, the provisions of the Structural Pest Control Act, poisonous and other dangerous chemicals used in pest control, the theory and practice relating to

the control of wood destroying pests or organisms by the use of insecticides, or structural repairs and corrections, and other state laws, safety or health measures, or practices that are reasonably within the scope of structural pest control, including an applicant's knowledge of the requirements regarding health effects and restrictions.

### Wood Roof Cleaning and Treatment

Education – Successful completion of board-approved course in the areas of contract law, rules and regulations, business practices, wood preservatives, and identification of wood destroying organisms and non-decay fungi on wood shake or shingle roofs.

Experience – Two years' actual experience in the practice of inspecting wood shake or shingle roofs to determine the presence or absence of wood destroying organisms including decay fungi on the wood shakes or shingles, and resulting decay, and non-decay fungi including mold, mildew, lichen, or moss, cleaning the wood shakes or shingles; and applying wood preservatives to the wood shakes or shingles to prevent infection of wood destroying organisms or non-decay fungi or further damage from wood destroying organisms.

Examination – Must successfully pass written examination with a score of 70% or better. The examination will ascertain that the applicant is qualified in the use and understanding of the English language, including reading, writing, and spelling, the building and safety laws of the state and any of its political subdivisions, the labor laws of the state, the provisions of the Structural Pest Control Act, poisonous and other dangerous chemical used in pest control, the theory and practice relating to the practice of inspecting wood shake or shingle roofs to determine the presence or absence of wood destroying organisms including decay fungi on the wood shakes or shingles.

### ***Passage Rates / Legitimate Justification for Exams / Validation***

The Structural Pest Control Board has just completed the occupational analysis for all three of its license categories in the area of General Pest (Branch 2). Examinations are in the process of development and validation.

The same process has begun for the three categories in the area of Wood Destroying Pests and Organisms (Branch 3), and is scheduled to be completed by June 2000, along with the two categories in Fumigation (Branch 1). The chart below indicates those examinations which have been completed and the completion dates for the remainder.

	BRANCH I (Fumigation)	BRANCH II (General Pests)	BRANCH III (Wood Destroying Organisms)
OPERATOR	Occupational Analysis 2/25/00  New Examination 6/16/00	Occupational Analysis Done  New Examination Done	Occupational Analysis 2/25/00  New Examination 6/16/00
FIELD REPRESENTATIVE	Occupational Analysis 2/25/00  New Examination 6/16/00	Occupational Analysis Done  New Examination Done	Occupational Analysis 2/25/00  New Examination 6/16/00
APPLICATOR	No Licensing Category	Occupational Analysis Done  New Examination Done	Occupational Analysis 2/25/00  New Examination 6/16/00

The Board does not believe that the examination process should be eliminated. The primary reason for the Board to exist is to ensure the health and safety of the consuming public. At a minimum, the examination process should ensure that those practicing pest control have a basic knowledge in their area of practice.

OPERATOR				
	1995/96	1996/97	1997/98	1998/99
<b>CANDIDATES</b>	763	744	950	949
<b>PASS %</b>	27%	28%	29%	24%

FIELD REPRESENTATIVE				
	1995/96	1996/97	1997/98	1998/99
<b>CANDIDATES</b>	7109	6818	6845	5985
<b>PASS %</b>	37%	37%	36%	32%

APPLICATOR				
	1995/96	1996/97	1997/98	1998/99
<b>CANDIDATES</b>	3104	3295	3919	3476
<b>PASS %</b>	87%	87%	88%	85%

The Structural Pest Control Board does not keep statistics on the average time to process applications, administer the examination or issue licenses.

Examinations are given once a month. If an applicant submits an examination application prior to final filing date for that month, they would be scheduled for that same month.

The examinations are given at two sites; one is located in Southern California (San Bernardino) and the other in Northern California (Sacramento).

The completed examinations are returned to the board's office and scored within that same week. The applicant is notified by mail of the examination results. Passing applicants are provided with a license application. Once the license application is received, it is processed and the license is issued by the Department of Consumer Affairs.

It should be noted, however, that those examinations (3) which have been updated and validated are taking about five days longer to issue results. The new examinations are returned to the Office of Examination Resources for grading and verifying (validating). The results are returned to the Board and the applicants notified if they passed or failed.

### **Continuing Education/Competency Requirements**

Competence, negligence, or gross negligence are not defined in the Structural Pest Control Act or its Rules and Regulations. The Board uses the definitions established by case law in these cases. Gross negligence is defined as an extreme departure from the standard practice of pest control. Negligence is defined as a departure from the standard practice of pest control. While there is no competence definition in statute, competence is alluded to by Section 1937.14 of the California Code of Regulations. Section 8642 allows for the charge of gross negligence and Section 8643 for negligence. Grounds for suspension and revocation of a license

are, however, found in Sections 8635 through 8644; 8646 through 8648; and 8651. These areas can result in disciplinary action against licensee/registered company. Expert witnesses are used to establish the standards of the industry as the grounds pertaining to proper practice of pest control (i.e. inspections, poor workmanship, misapplication of chemicals, etc.).

The examination, licensing and continuing education processes are very valuable tools in determining competency. Further, a consistency in submitting incomplete inspection reports, not recognizing needed work, misuse of pesticides and fumigants and lack of supervision can all be contributors to incompetency.

It should also be pointed out that the industry association, Pest Control Operators of California, Inc., has established written industry standards. These standards are routinely updated and lend credibility in administrative hearings and are an additional tool relied upon by expert witnesses.

Additionally, the Food and Agriculture Code governs worker health and safety in relation to appropriate protective clothing for use during the mixing and application of pesticides and fumigants.

The Structural Pest Control Board continues to require continuing education hours as a requirement for renewal of a license. There has been no dramatic change in this area.

### **Comity/Reciprocity With Other States**

The Structural Pest Control Board has no reciprocity with other States. The Board evaluates out of state experience on an equivalency basis. An out-of-state licensee may not practice pest control prior to his or her application for licensure being approved and the license issued. The out-of-state applicant must provide the Board with a license history and a Rules and Regulation book from the State in which he or she was previously licensed. If his or her level of experience is in question, the regulatory agency is then called to verify and access pertinent information to ensure that the applicant is applying for a license which is consistent with his or her prior out of state classification. The Structural Pest Control Board does not recognize international reciprocity. It is not deemed practical due to the fact that there are so many alternative methods practiced around the world. Furthermore, the United States is considered far ahead in relationship to termite and pest control, while other countries may be less knowledgeable and possibly using outdated techniques.

The statutes and regulations governing structural pest control in the State of California, without a doubt are much more stringent than other states in the country. The states of Texas and Arizona are perhaps the closest in approximating



what California has done and is doing. It should be understood that different states have different problems. States that are extremely cold such as Alaska and Minnesota do not have problems with dry wood termites. States such as Hawaii and some of the Gulf states are experiencing problems with the Formosan termite.

The only time a temporary license is issued is for the applicator. Through a Memorandum of Understanding the Board contracts with each County Agricultural Commissioners Office (CAC) to administer and proctor the examination. When an applicant passes the examination, he/she is issued a 30 day temporary license. All examination paperwork is sent to the Board and the permanent license is issued by the Department.

## ENFORCEMENT ACTIVITY

ENFORCEMENT DATA	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
<b>Inquiries</b>	* See Below			
<b>Complaints Received (Source)</b>	Total: 987	Total: 1231	Total: 1342	Total: 1246
Public	939	1146	1284	1224
Licensee/Professional Groups	34	66	44	11
Governmental Agencies	14	19	14	11
Other	0	0	0	0
<b>Complaints Filed (By Type)</b>	Total: 987	Total: 1231	Total: 1342	Total: 1246
Competence/Negligence	278	234	232	136
Contract	513	801	893	981
Fraud	7	42	36	16
Health & Safety	1	0	10	1
Unlicensed Activity	85	78	35	8
Non-Juris (include other)	103	76	136	104
<b>Complaints Closed</b>	Total: 1036	Total: 1117	Total: 1396	Total: 1283
<b>Investigations Commenced (Specialist &amp; DOI)</b>	Total: 369	Total: 539	Total: 537	Total: 439
<b>Compliance Actions</b>	Total: 606	Total: 949	Total: 1111	Total: 1297
County Ag. Cite & Fine	294	341	299	277
Cease & Desist/Warning	6	9	5	5
Violations Issued/Compliance	222	347	408	296
Board Specialist Site				
Inspections (office records checks)	83	252	399	719
<b>Referred for Criminal Action</b>	Total: N/A	Total:	Total:	Total:
No stats available				
<b>Referred to AG's Office</b>	Total: 41	Total: 37	Total: 28	Total: 19
Accusations Filed	39	31	26	13
Accusations Withdrawn	5	4	9	4
Accusations Dismissed	1	10	3	4
<b>Stipulated Settlements</b>	Total: 13	Total: 16	Total: 8	Total: 21
<b>Disciplinary Actions</b>	Total: 46	Total: 44	Total: 57	Total: 47
Revocation	35	21	46	26
Voluntary Surrender	0	0	0	2
Suspension Only	1	0	0	1
Probation with Suspension	5	14	3	16
Probation	5	8	7	2
Probationary License Issued	0	1	1	0
<b>Probation Violations</b>	Total: 6	Total: 9	Total: 5	Total: 5
Suspension or Probation	0	3	2	0
Revocation or Surrender	3	4	3	1

\*In 1996 the Board manually tracked the number of calls received by the complaint unit. The average was approximately 76 calls per day (includes inquires and complaint questions) which would be 19,076 per year. To date the Board has not been able to implement a tracking system for all calls to the Board.

### **Enforcement Program Overview**

The major source of complaints is from consumers of pest control services. However, complaints relative to structural pest control may be filed by anyone, including the Board, departments and agencies, agents of the homeowner, or even a registered pest control company. Should a complaint not fall within the Board's jurisdiction it will be forwarded to the proper agency for response. If a call or event is deemed an emergency where there may be an imminent threat to the public welfare, such as an explosion, illness or death, investigations become a priority and expedited protocols are implemented.

There are no unique reporting requirements. However, if a problem related to structural pest control is discovered by another governmental entity, it will generally refer the problem to the Board. Any action taken against Board licensees by the County Agricultural Commissioners (under the inter-agency agreement), is always reported to the Board.

In general, the Board has very little difficulty in securing the appropriate information to investigate a complaint.

The majority of the complaints which the Board receives are related to problems arising from "under-calling." Under-calling is generally defined as items and problems with the structure that should have been noted in the "termite report" but were not. The consumer then finds the problem, calls the company and if it fails to respond to the concerns, a complaint is filed.

Over the past years the Board has become more accepting of stipulations as it relates to discipline. A stipulation imposing discipline is negotiated settlement of the matter. In exchange for the negotiated imposition of license sanctions, the Board saves the costs of litigation and the risk of a dismissal of the action. In general about one fourth to one third of all disciplinary cases are resolved by stipulation. While the criteria for imposing any sanction must be guided by the established disciplinary guidelines, there can be elements to a case, if sent to hearing, that may result in a lesser penalty or dismissal due to facts that may not be entered into the administrative process. An example would be when the consumer filed a complaint but refused to testify (they didn't want to get involved). Without first hand testimony, a case may become weaker. The Executive Officer in conjunction with the Deputy Attorney General may determine that stiffer and warranted sanctions would be achieved through stipulation. Further, more and more licensees seem to want to stipulate rather than incurring the costs associated with a full hearing.

The Board receives an average of 1200 complaints each fiscal year. An average of 39% to 40% is referred to investigation and about 29% of those cases are referred to the

administrative process. However, keep in mind that cases referred to investigation may also result in a citation and fine being assessed.

The last fiscal year indicates a reduction in the number of accusations filed. The Board has looked at this carefully and determined that a number of things may have contributed to the reduction. Rather than sending every violator through the administrative process, the Board now has the authority to use citation and fine as a means of discipline. The Board believes that when you have both tools available for discipline that the administrative process should be for those who continue to violate the Act or the licensee's actions are so grievous that progressive discipline is not viable. The case should be sent directly to the administrative process. The drop in administrative cases this fiscal year may be an aberration (not unlike the year where 60 administrative cases were filed), and is monitoring the situation closely.

NUMBER AND PERCENTAGE OF COMPLAINTS DISMISSED, REFERRED FOR INVESTIGATION, TO ACCUSATION AND FOR DISCIPLINARY ACTION				
	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
<b>COMPLAINTS RECEIVED</b>	987	1,231	1,342	1,246
Complaints Closed	1,036	1,117	1,396	1,283
Referred for Investigation	369 (37%)	539 (44%)	537 (40%)	439 (35%)
Accusation Filed*	39	30	26	13
Disciplinary Action **	46	44	57	47
* Does not include statement of issues filed.				
** These actions may reflect some carry over from year to year.				

### **Case Aging Data**

Each day the Consumer Assistant Technician takes the new cases which have come to the Board and inserts the consumer complaint information into a file folder and assigns a case number. This is done within 24 hours of receipt. The Consumer Services Representative reviews the new complaint to determine that it is within the Board's jurisdiction. If it is, then the appropriate code violations are indicated in the file. This also is done within 24 hours of receipt. The Consumer Assistant Technician then enters the complaint information into the computer, sends the consumer a card of acknowledgement and sends a copy of the complaint to the registered company/licensee and asks for a response within 10 days. This will take 2-5 days. This file is then "tickled" and the Board waits for the 10 day time period to lapse. If a response is received, the Consumer Services Representative will then contact the complainant. The company position is discussed. The mediation process can take as long as one day to resolve and up to 30 days. At the end of the mediation, if no resolution seems forthcoming, the case is referred to a Board Specialist.

Once the Specialist receives the case, it is reviewed and he or she will contact the complainant to set an appointment to look at the property in question. If it is determined that the company is not at fault, the case is closed within 10 days. If it is determined that the company is responsible, the Specialist will send a Report of Findings to the company/licensee. It then has 20 days to request a hearing on the findings or 30 days to bring the property into compliance. If there is good cause to do so, the 30 days may be extended to 60 days, and in cases of extremely good cause (complainant unavailable, materials must be specially milled etc.) the time may be extended as necessary. If the company/licensee asks for a hearing or fails to comply with the Report of Findings, the case is prepared for submission to the Assistant Registrar for Enforcement. The Assistant Registrar will then determine if there is enough evidence for submission to the Office of the Attorney General. This process will take two to five days.

The Executive Officer gives the final approval to forward the case to the Office of the Attorney General. A decision is made within five days. If approval is given, the Office Technician prepares the documents for transmittal. The Legal Assistants prepare the appropriate legal documentation (i.e. license histories). Within two to four days the case will be submitted to the Office of the Attorney General where a Deputy Attorney General is assigned to the case. The Legal Assistant who prepared the case will work with the Deputy Attorney General until the accusation is prepared and sent to the office for signature. This action signifies the filing of the accusation.

The Deputy Attorneys General rarely request further investigation before filing an accusation. They may, however, request further clarification on a particular issue. The Board has only one year from the date the complaint was filed to take disciplinary action (file accusation) against a company/licensee.

AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES				
	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Complaint Processing	76	64	78	86
Investigations	283	254	245	263
Division of Investigation	273	261	245	480
Pre-Accusation*	N/A			
Post-Accusation	N/A			
<b>TOTAL AVERAGE DAYS</b>				
*The TEALE program does not allow the Board to generate aging data as outline in this report.				

Average % of cases closed from total closed during 4 years.

INVESTIGATIONS CLOSED WITHIN:	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99	AVERAGE % CASES CLOSED
90 Days	464	547	743	553	48%
180 Days	249	232	269	309	22%
1 Year	190	246	276	332	22%
2 Years	128	88	98	88	8%
3 Years	5	4	10	1	0.4%
Over 3 Years	0	0	0	0	0%
<b>Total Cases Closed</b>	<b>1036</b>	<b>1117</b>	<b>1396</b>	<b>1283</b>	<b>Total 4832</b>

AG CASES CLOSED WITHIN:	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99	AVERAGE % CASES CLOSED
1 Year	14	10	13	9	
2 Years	31	17	20	16	
3 Years	5	9	5	1	
4 Years	0	2	3	5	
Over 4 Years	3	0	4	4	
<b>Total Cases Closed</b>	<b>53</b>	<b>38</b>	<b>45</b>	<b>35</b>	
<b>Disciplinary Cases Pending</b>	<b>1</b>	<b>2</b>	<b>4</b>	<b>13</b>	<b>Total 20</b>

### **Structural Pest Control Board Cite and Fine Program**

CITATIONS AND FINES	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Total Citations*	N/A	N/A	N/A	4
Total Citations With Fines				4
Amount Assessed (dollars)				1,350
Reduced, Withdrawn, Dismissed				250
<b>Amount Collected</b>				0
*The Structural Pest Control Board did not have cite and fine authority until January 1999.				

COUNTY AGRICULTURAL COMMISSIONER PESTICIDE CITE AND FINE PROGRAM	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Total Citations	294	341	299	282
Amount Assessed (dollars)	61,425	56,509	56,118	60,364
Reduced, Withdrawn, Dismissed	2,750	3,575	1,650	1,251
<b>Amount Collected (dollars)</b>	<b>69,060</b>	<b>53,800</b>	<b>45,707</b>	<b>55,328</b>

### **Diversion Program**

The Structural Pest Control Board has no statutory authority to implement a diversion program for alcohol and substance abusing licensees. The matter of alcohol and substance abuse is almost never an issue made by the consuming public when complaints are filed and is almost never brought forth by a licensee during any administrative or disciplinary hearing as a cause for his/her actions which may have led to the allegations and/or discipline. During reinstatement hearings, a few licensees have indicated that alcohol or other substances may have been a contributing factor to their actions that resulted in the revocation of a license, but at that time the licensee generally indicates that he/she has



completed a rehabilitation program as a means of demonstrating to the Board that their license should be reinstated. For these reasons, the Board has never given consideration to proposing statutory authority to establish a diversion program.

### **Results of Complainant Survey**

For the past twelve years, every consumer who files a complaint is sent a card following closure of the case, asking that they note the service they received. There is also a space provided for open-ended remarks. This allows the Board to determine if the Consumer Services Representatives and Specialists (Investigators) are providing the level of service to the consumer that is expected.

<b>CONSUMER SATISFACTION SURVEY RESULTS*</b>				
<b>QUESTIONS</b>	<b>RESPONSES</b>			
	<b>Responses</b>	<b>Yes Percentage</b>	<b>No Percentage</b>	<b>No Answer Percentage</b>
1. Were you satisfied with the results?	589	91	4	5
2. Did you feel the representative understood the aspects of the case?	589	90	3	7
3. Did our representative deal with the case in a fair and reasonable manner?	589	83	3	4
4. Was our representative courteous?	589	91	1	8
5. How long did it take the Board to complete it's action on your problem?	826	N/A	N/A	N/A
6. Will you recommend our services to others?	826	79	15	6
7. If you experience structural pest control problems in the future, would you contact the Board?	826	83	12	5
8. Did our representative fully explain our role and jurisdiction over your problem?	826	77	16	7
9. Did our representative deal with your problem in a fair and reasonable manner?	826	79	13	8
10. Do you feel the representative understood your problems?	826	84	11	5
11. Was our representative courteous?	826	91	4	5
<b>*This chart represents a random selection of survey responses from August 11, 1996 through July 23, 1999.</b>				

## ENFORCEMENT EXPENDITURES AND COST RECOVERY

### *Average Costs for Disciplinary Cases*

AVERAGE COST PER CASE INVESTIGATED	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Cost of Investigation & Experts	9,302	21,835	26,690	9,942
Number of Cases Referred	41	37	28	19
Average Cost Per Case	226	590	953	523
AVERAGE COST PER CASE REFERRED TO AG	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Cost of Prosecution & Hearings	660,143*	748,489*	385,856*	391,978
Number of Cases Referred	41	37	28	19
Average Cost Per Case	16,101	20,229	13,780	20,630
AVERAGE COST PER DISCIPLINARY CASE				
* The increased costs reflect cost for two civil lawsuits brought by the Board concerning false and misleading advertising.				

### *Cost Recovery Efforts*

COST RECOVERY DATA	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Enforcement Expenditures	N/A			
Potential Cases for Recovery*	N/A	44	57	47
Cases Recovery Ordered**	N/A	13	15	14
Amount Collected	N/A	18,052.44	32,786.70	61,931.37
*The "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation, or violations, of the License Practice Act.				
**These numbers reflect # of cases actually recovered from the actual # of cases ordered to pay costs recovery could be higher.				

## RESTITUTION PROVIDED TO CONSUMERS

### *Consumer Restitution*

Prior to 1997, the Board did not believe it had the authority to order restitution through the administrative process. The original Sunset review (1996) provides an explanation and memorandum from the Office of the Attorney General. However, it

is important to note that generally in those cases that are mediated or investigated, but not sent for administrative action, the consumer was made whole by the property being brought into compliance. Bringing the property into compliance represents a cost savings to the consumer.

Beginning in 1997, the Board did begin to maintain records on both restitution ordered through the stipulation and/or administrative hearing process.

If a complaint does not go through the formal administrative process, but is resolved by mediation or investigation, and if violations occur, the registered company is ordered to bring the property into compliance, thus saving the consumer hundreds to thousands of dollars. When a case is sent forward for discipline, the board always requests restitution to the consumer. However, having said that, it is the decision of the Administrative Law Judge to impose restitution. If the judge, for some reason, does not impose restitution and the board disagrees, then the Board may call for the transcript, review the case and if warranted order restitution.

### **Administrative Cases**

RESTITUTION DATA	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Amount Ordered (dollars)	N/A	9127	42,612	70,946.18
Amount Collected (dollars)	N/A	5050	27,612	51,384.18

*DELIVERY RESTITUTION	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Savings to Consumers thru Compliance (dollars)	118,282	663,051	633,749	685,492
*NOTE: Delivery restitution represents all complaint cases that were investigated				

## COMPLAINT DISCLOSURE POLICY

The Structural Pest Control Board complaint disclosure policy has been developed to provide the public with information regarding complaints and disciplinary action against pest control licensees, candidates for licensure, and unlicensed individuals.

The Board's complaint disclosure policy does not include non-actionable complaints. Non-actionable complaints are those, which after investigation, were determined to be unsubstantiated or complaints which have been determined not to be within the Board's jurisdiction. If a complaint was initially determined to indicate a probable violation of law and is later found, upon further investigation, not to constitute a violation, it shall not be disclosed.

In complying with a request for complaint information, the Board may provide such

cautionary statements as may be considered appropriate regarding the usefulness of complaint information to individual consumers in their selection of a pest control licensee.

**The following information is disclosed regarding closed actionable complaints:**

Closed actionable complaints are defined to mean complaints, which the Board has (1) investigated, (2) determined that there was a violation of the laws regulating the practice of structural pest control and, (3) taken disciplinary action (i.e. citation, accusation, statement of issues, stipulated settlement).

With regard to closed actionable complaints, the board will disclose the number of closed actionable complaints, and the disposition or action taken, including any criminal conviction or any decision or stipulation which resulted from the filing of an Accusation or Statement of Issues, and the date of closure. The disposition of administrative cases (in Accusation and Statement of Issues) is released only after the decision has become effective. The Board will furnish a copy of the Accusation, Statement of Issues, citations, documents introduced at the hearing relating to a disciplinary action, and the Decision resulting.

**Pending complaints are defined to include the following:**

Category 1.

- (a) Complaints which are under investigation but no determination has been made as to whether a violation of the Board's laws has occurred, or
- (b) Complaints which after review by Board staff, indicate a probable violation of the Board's laws, but a disposition of the complaint is pending.

Category 2.

- (a) A complaint which after an investigation has indicated a probable violation of the Board's law and has been referred to the Attorney General's Office for prosecution.

Category 3.

- (a) A complaint which has resulted in the issuance of a citation by the Board or county agricultural commissioners or the initiation of formal disciplinary action, e.g., an Accusation or Statement of Issues being filed by the Attorney General's Office, but where a decision has not been rendered.

## **Information To Be Disclosed on Pending Complaints**

Category 1 Complaints--- No information will be disclosed regarding Category 1 complaints.

Category 2 Complaints—The Board will disclose the existence and number of Category 2 complaints filed against a licensee, along with a statement that the complaint has been referred to the Attorney General’s Office for review and possible prosecution, but that there has been no final determination of wrongdoing by the licensee.

Category 3 complaints---The Board will disclose the existence and number of category 3 complaints and provide copies of the charging documents, e.g. Accusation, Statement of Issues, or Citations along with a statement that there has been no final determination of wrongdoing by the licensee.

## **Closed Actionable Complaints**

Upon receipt of any inquiry for complaint information, which results in identification of a closed actionable complaint(s), as defined in the Board's Complaint Disclosure Procedure, enforcement staff shall disclose specific information after making the following disclosure statement:

"The Board currently has (specify number) closed complaint(s), which has resulted in a n administrative or disciplinary action against this individual. A determination has been made that there has been a violation of the laws regulating the practice of pest control. Copies of an Accusation, Statement of Issues, Citations, Final Decisions, and any documents introduced at an administrative hearing or documents which have been previously distributed to a member of the public can be disclosed to a member of the public. All other documents contained in the investigatory file will not be made public in accordance with Government Code Section 6254(f)."

Following the statement, the board will disclose the number of complaints received and if there was a violation or if it was settled.

## **Pending Complaints in Board Office**

Upon receipt of an inquiry for complaint information which results in the identification of an open complaint(s), which is under investigation and pending a determination of a violation of intended action, enforcement staff shall make the following disclosure statement: "Currently there are no confirmed complaints against the company/individuals."

If complaints after investigation indicate a probable violation, and have been referred to the office of the Attorney General, but no formal documents have been filed then the following statement should be made. "The Board currently has (specific number) complaint(s) open against this company/individual. The matter(s) has been forwarded to the Attorney's General Office for review and possible prosecution. At this time there have been no confirmed violations of the Structural Pest Control Act."

## **Pending Complaints - Accusation or Statement of Issues Has Been Served**

Upon receipt of an inquiry for complaint information which results in the identification of an open complaint which has been referred to the Attorney General's Office and an Accusation or Statement of Issues has already been served, enforcement staff shall make the following disclosure statement:

"The Board currently has (specify number) complaint(s) open against this individual. The matter(s) has been forwarded to the Attorney General's Office and an Accusation/Statement of Issues has been served. At this time, there have been no confirmed violations of the Structural Pest Control Act. A copy of the Accusation/Statement of Issues can be obtained by submitting a written request to the Board."

## **CONSUMER OUTREACH AND EDUCATION**

Consumer outreach is achieved in a number of different ways. Every inspection report which is issued to a consumer has a statement at the bottom of the first page which states that if a consumer has a problem or a concern about their report they should first contact the company and barring satisfaction, they should then contact the Structural Pest Control Board. There is a 1- 800 number for the consumer to do so.

Additionally, information is provided to the public at various meetings and conventions which may be held. Each year the Department of Consumer Affairs

maintains a booth at the California State Fair and the Board will provide information for distribution to the public. Board employees staff the booth a certain number of days during the run of the Fair.

The Board, in 1998, re-instituted a newsletter which is published three times a year. This newsletter is not only mailed to board licensees but other consumer groups, organizations, and interested parties which have requested to be placed on the Board mailing list. The newsletter also reflects disciplinary actions which the Board has taken against licenses.

Brochures concerning fumigations, general pests and termites are available to the public. Further, there is a brochure which is comprised of commonly asked questions by consumers, with answers provided.

For the past twelve years, every consumer who files a complaint is sent a card following closure of the case, asking that they rate the service they received, if they were satisfied and how long it took to complete the action, among several other questions. Further, licensees/companies who are named in a complaint are sent a similar survey card once the case is closed, with questions pertaining to the handling of the consumer complaint by staff and an investigation.

Finally, the Board developed an independent web-site for the consumer and licensees. The web site provides licensing, examination, and disciplinary information. Forms that a consumer might need or a licensee may need can be found on the web site. The Structural Pest Control Act is also available. The Board is just beginning to formulate articles with information related to structural pest control important for the consumer. One example would be "Buying or selling a home: Read the Termite Report."

Regulatory changes are also posted on the web site. Additionally, all regulatory changes are mailed to the licensee in the Branch which is effected. The printed brochures are also available to the consumer on the web site.

## PART 2.

# STRUCTURAL PEST CONTROL BOARD

### BOARDS RESPONSE TO IDENTIFIED ISSUES AND RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

**ISSUE #1. Should the licensing of structural pest control operators, field representatives and applicators be continued?**

Recommendation: The state should continue to license structural pest control operators, field representatives and applicators.

*Comment: The profession of pest control deals in areas outside the realm of common experience, centering as it must, on the esoteric areas of entomology, toxicology, and structural integrity. Pest control is a field where success is quantified by a “kill-ratio.” And though the term is applied to some housemates such as rodents and other annoying, often disease carrying creatures, the purpose of enforcement is to confine the “kill-ratio” to those creatures rather than to humans who inhabit or work in that same dwelling.*

*Structural pest control is a field whose history is fraught with chicanery and totems. The pest control industry in 1934 perceived the danger to itself and to the consumer in the lack of regulation and risks inherent in the very work itself. It was the pest control industry which requested that the State of California regulate the practice. As the history shows, the regulation was not intended to limit fair competition in the market place but rather to protect the public at large, the consumer and those working in the industry.*

*The opinion is uniform that regulation in the industry saves lives and protects property. The stakes in a non-regulated environment are particularly high. Pesticides and deadly gases misapplied or misused are harmful to the human body and result in well documented health consequences, which include death and severe long-term health problems.*



*The financial stake to the consumer who seeks to avail himself/herself of the services of a pest control company is the costly business of repair of the primary asset of most Californians, their home. When that work is performed in a sub-standard, incompetent or grossly negligent manner, somehow the dream begins to fade along with the savings account of the homeowner. Therefore, while the subject of pest control appears at first blush banal, it is an industry which touches the very places, where we may live and work.*

*Every state in the nation regulates the practice of pest control in some manner. No state has deregulated the pest control industry. In point of fact, many states are creating more laws and regulation to protect the consumer, where at one time, none or only minimum standards existed. The Board believes that the State of California should continue to license and regulate the structural pest control industry.*

## **ISSUE #2. Should the Structural Pest Control Board be continued?**

Recommendation: The Structural Pest Control Board should continue to be the agency responsible for regulating the practice of pest control. Legislation should be enacted to continue the Board and require a subsequent sunset review in three years.

Comment: Webster defines “regulate” as to “control or direct according to a rule.” The age old question which is discussed, most particularly through every election cycle is, “How much and how often should government regulate?” Government may feel one way, business another, and more often than not the consumer is caught in the middle. With regard to the consumer, there is not one group or entity which would require less protection than another. One might ask, “Isn’t pest control necessary only when buying and selling a home?” Consider for a moment the far reaches of the pest control industry. Childcare centers, hospitals, convalescent and nursing homes, an residential care facilities avail themselves of pest control. Indeed, every restaurant, food supplier, service station, state building, sports facility, etc., has need of the pest control industry on a regular or frequent basis.

*Since 1976 according to records, thirty-eight deaths have resulted from fumigations. In 1968, a natural gas blast resulting from a fumigation damaged and rocked a 32 square block area of San Jose. In 1996, a similar blast leveled one building and damaged several others in Santa Clara. In short, the business of pest control can be catastrophic and it can be deadly. When a termite inspector fails to identify termite infestations, fungus decay or damage to a structure, a house can collapse, a deck fail or a balcony fall.*

*The business of pest control should not be “let the buyer beware.” The average consumers are not entomologists, they don’t know how to handle or to understand*

*label requirements for pesticides and they often don't know what can happen to a home when termites, fungus and wood boring beetles go unabated.*

*In 1934, it was the pest control industry that asked for regulation. Today this is still true. In 1999, the consumer is asking for more protection from those who seek to break the rules. Defining regulation in the pest control business is not simply to define a "bad hair day" or "a car that won't start." By definition pest control regulation translates into health, safety and economic protection for each and every citizen in the State of California.*

### **ISSUE #3. Should the composition of the Board be changed?**

Recommendation: No Change.

Comment: The Board is a public majority board with a total of seven (7) members: four (4) public and three (3) professional. Other states have included representatives from agencies involved in regulating the use of pesticides. However, the public majority should be maintained and the Board could establish an advisory committee composed of representatives from other related agencies if necessary.

*The Board does include representatives from the Department of Pesticide Regulation (DPR) and the County Agricultural Commissioners on several committees where pesticide issues and enforcement are considered for regulatory or legislative discussion. A representative from the Department of Pesticide Regulation currently sits on the SPCB Research Advisory Panel and a representative from DPR also sits on the Disciplinary Review Committee.*

### **ISSUE #4. Should the legislative intent of the Board be clarified so that its primary mission is to protect the consumer?**

Recommendation: Legislative findings and intent should be included in the Structural Pest Control Board Act to clarify that its primary mission is consumer protection.

Comment: The Board's current mission statement points to an industry rather than a consumer orientation. The mission statement makes "ensuring consumer protection" a means to attain a "fair and competitive marketplace." These priorities should be reversed.

*In 1997, following the recommendation from the Sunset Review Committee and during the Board's annual Strategic Planning session, both the mission and vision*

*statement were reviewed and changed based upon the Committees recommendation. The new Mission and Vision Statement is as follows:*

### ***THE MISSION STATEMENT***

*The Structural Pest Control Board exists to protect and provide redress to the consumer of structural pest control services and is committed to the public's health, safety and welfare.*

### ***THE VISION STATEMENT***

*To continue to improve and assure the protection of the public in the rendering of structural pest control service.*

*The Mission Statement has not yet been codified. The Board determined that when the Sunset Review Committee approves the Mission/Vision statement they will seek legislation to include the mission of the Board in the Structural Pest Control Act. Currently, the Mission Statement can be found on the SPCB's Web page, and the Strategic Plan. Once it is approved by the Joint Committees it will be printed on all consumer brochures and information for the public.*

**ISSUE #5. Should the occupational analysis be performed on the licensing examinations for pest control operators and field representative to assess the minimum competency necessary to practice in this profession?**

Recommendation: The Board should conduct an occupational analysis of the industry to assure the exam's validity and relevance to risks faced by consumers. The Board should also have its examinations evaluated and validated by DCA's Office of Examination Resources. This review process should be initiated as soon as possible.

Comment: *There has been a great deal of concern over the low passage rates for the Board's examinations. In 1995/96, the passage rate for operators was 28%, while the passage rate for field representatives was 36%. The Board may be testing for more than minimum competency needed to practice this profession. It has been argued that the examination does not test for the appropriate skills, knowledge and abilities needed to work within this field, and that questions are irrelevant to the practice of pest control. The Board is currently undertaking an occupational analysis of its examinations.*

*In 1997, the SPCB contracted with the Office of Examination Resources to conduct the Occupational Analysis and update all of the Board licensing exams.*

*Currently the Board has 10 licensing examinations. There are two exams in Branch One (fumigation), three in Branch Two (general pest), and three in Branch Three (wood destroying pests and organisms). In addition there are two examinations for Wood Roof Cleaning and Treatment.*

*To date, the three exams in Branch II have been updated and validated.*

*The following chart indicates the status of the Occupational Analysis.*

### III

	<i>BRANCH I</i> (Fumigation)	<i>BRANCH II</i> (General Pests)	<i>BRANCH</i> (Wood Destroying Organisms)
<i>OPERATOR</i>	Occupational Analysis 2/25/00  New Examination 6/16/00	Occupational Analysis <b>Done</b>  New Examination <b>Done</b>	Occupational Analysis 2/25/00  New Examination 6/16/00
<i>FIELD REPRESENTATIV E</i>	Occupational Analysis 2/25/00  New Examination 6/16/00	Occupational Analysis <b>Done</b>  New Examination <b>Done</b>	Occupational Analysis 2/25/00  New Examination 6/16/00
<i>APPLICATOR</i>	No Licensing Category	Occupational Analysis <b>Done</b>  New Examination <b>Done</b>	Occupational Analysis 2/25/00  New Examination 6/16/00

*The process of conducting Occupational Analyses and updating and validating the examinations is on-going.*

**ISSUE #6. Should the current requirement that all pest control businesses file with the Board all inspection reports and notices of work completed, and that they be affixed with a stamp issued by the Board, be eliminated?**

Recommendation: Pest control businesses should not be required to file daily inspection reports and notices of work completed with the Board. An alternative method should be found to the filing of these numerous documents with the Board. A plan to eliminate the requirement of filing these documents should be prepared by DCA, the Joint Committee and the Board, and submitted to LAO, Department of Finance and the respective Budget Committees by October 1, 1998. The implementation of this fiscal plan should be completed by budget year 1999/00.

Comment: The Board receives and files some 8000 documents from pest control businesses each day. (Over a million documents per year.) California is unique in mandating the filing of reports for every inspection. There is no indication that

filing these reports has assisted the Board in detecting enforcement problems, or in the disciplining of operators (licensees). It does, however, provide a means to generate a large percentage of the Board's revenue, approximately 86%, since every document filed requires a stamp which must be purchased from the Board. The Board and DCA should work with the Joint Committee in attempting to find some other alternative method to the filing of inspection reports and notices of work completed with the Board.

*The Board concurred with the recommendation from the Sunset Review Committee. In 1997, following the Sunset Review process, the Board appointed a Committee to begin the process of dismantling the current system of filing reports with the Board. The Board kept DCA, the budget analyst and the Sunset Review Committee consultant apprised of the progress.*

*It was determined by the Board Committee that while it was not necessary to file the inspection reports in total, it was important for enforcement purposes to have a record of the address for which an inspection was done. The Board Committee designed what is called a "Wood Destroying Organism Activity Form." (See Attachment A). This Activity Form will be one page with room for ten addresses. There is also a box which will be checked indicating if an inspection was done or a notice of work completed was issued. The company must submit that form and the required current fee (\$1.75 per address) to the Board within ten working days.*

*The statutory changes required to implement the new program under the Pest Control Act were carried by the Business and Professions Committee (SB1307). That measure was signed by the Governor and becomes effective January 1, 2000.*

*The Board firmly believes that with these changes, a costly burden to business and industry has been lifted, but at the same time the revenue to the Board is sustained. Most importantly, the ability to address consumer concerns and complaints has been maintained.*

**ISSUE #7. Should the Board monitor the amount of corrective work recommended in termite inspection reports and performed on residential structures by licensees?**

Recommendation:

The Board should closely monitor the amount of corrective work recommended by licensees for home repair work to assure that it is directly related to problems identified during the inspection of these residential structures. The Board should report to the Joint Committee by October 1, 1998, on any abuses which have occurred.

Comment: The sale or refinancing of residential property may depend upon the recommendations made in the structural pest inspection report. Companies making the inspections may also perform the repairs. Licensees performing the inspections receive a commission for the amount of repairs recommended in the report. A recent change in the law prohibits licensees from recommending or performing corrective work in excess of that required to fix the problem. However, this area still has great potential for abuse by unscrupulous licensees.

*The issue of “over-corrective” work being performed was raised by a constituent in Senator Daniel Boatwright’s district. This constituent also was in the business of performing home inspections. The result of the issue raised was a new statute added to the Pest Control Act that forbids licensees from calling “over-corrective” or excessive work to a structure.*

*Since the time that the law went into effect, the Board has monitored the issue. Over time the Investigators have been asked to report directly to the Executive Officer anytime they see or suspect excessive work being done on a structure. Random inspections have been done by the investigators and the end result has been “under-calling” rather than “over-calling.” Indeed, the Board has monitored every complaint since the last Sunset Review, and not one complaint has proven to be an issue of “over-calling.” However, in reviewing not only the complaints since the last Sunset Review, but going back through time, the issue remains “under-calling.” In short, when an inspection is done, it is the “findings” or the problems which are not called concerning the structure which become problematic. For example, a structural pest control inspector indicates on the termite report that there are no drywood termites present and no subterranean termites. The buyer of a home moves in and discovers a problem. A complaint is filed, and a Board investigator inspects the structure. What is found is that the report was correct, there are no drywood termites, however, there is evidence of subterranean termite activity. A report of findings is issued and the company who did the initial inspection was compelled to return to the structure and treat the subterranean termite problem at no cost to the consumer. Problems and examples of “under-calling” such as this and others are mirrored over and over again through the complaint process.*

*The Board continues to monitor for excessive or “over-corrective” work. But to date, evidence concerning the issue is not born out through random checks on the companies or through the complaint process.*

**ISSUE #8. Should the Board be allowed to contract directly with county agricultural commissioners rather than through the Department of Pesticide Regulation (DPR) for pesticide enforcement purposes?**

Recommendation: The Board should be granted statutory authority to contract directly with county agricultural commissioners.

Comment: There is currently a memorandum of understanding with DPR to act as the Board's enforcement agent of pesticide regulation. However, DPR in turn contracts with the county agricultural commissioners (and their staff) to carry out inspections and investigations dealing with the use of pesticides. It would appear as if substantial savings could be found if the Board were granted authority to contract directly with county agricultural commissioners.

*Prior to the last Sunset Review, the Board raised the issue of its relationship with the Department of Pesticide Regulation and the County Agricultural Commissioners. There was a frustration on the part of the Board that communication between the entities was at a very low ebb. Further, elements of the Memorandum of Understanding were not being fulfilled or forthcoming. Born out that frustration was the notion that maybe it would be more cost effective for the Board to contract directly with the CAC's. The Joint Committee recommended pursuing the viability of that option or at the very least trying to resolve the difficulties.*

*Following Sunset Review both the Executive Officer and the Director of the Department of Pesticide Regulation met and had a broad discussion concerning the problems on both sides. It was determined that a working group comprised of one top individual at DPR, the Executive Officer, one Board member, and two representatives from the County Agricultural Commissioners (one from the north and one from the south) and one industry representative would come together to discuss and resolve the problems which had occurred over time.*

*There were three major problems for the Board. The first was lack of communication, the second was the lack of training for CAC investigators concerning enforcement of structural pesticide use as required by statute, and no accountability of the funding provided by the Board.*

*For the next year the working group met and worked on the major problems and many others as well. One thing that was determined was that in reality it would not be more cost effective to the Board to contract directly with the CAC's. In reviewing the direct costs to the counties for structural pest control enforcement it was learned that in addition to the dollars received from the Board, there are funds allocated by DPR to the counties through the "mil" tax for enforcement purposes. The CAC's also receive some additional dollars from the county budget for structural pest control enforcement.*



*All entities agreed to an accounting process developed by the working committee that would provide the Board with the information concerning expenditures which it had never had. Within DPR there was a liaison position whose full salary was paid for by the Board. Through the discussions it was found that the position also performed other tasks unrelated to structural pesticide enforcement. As a result, DPR determined that the position would be better served under the auspices of the Board. Since the funding was already part of the Board budget, all that was needed was to acquire the position authority. This was done through a BCP and is part of the 1999/2000 budget.*

*The training program was re-implemented and has been in place for the past two years. Regulatory guidelines were developed for the Disciplinary Review Committee and are currently at the Office of Administrative Law.*

*A new MOU (see Appendix B) was developed and agreed upon by all parties. The working group continues to meet once a year. On-going meetings are held between the senior staff of all parties to discuss problems and enhancements for enforcement of pesticide use as it relates to structural pest control.*

**PART 3.**  
**STRUCTURAL PEST CONTROL BOARD**  
  
**BOARD COMMENT TO THE ISSUE RAISED BY THE**  
**CALIFORNIA PUBLIC INTEREST RESEARCH GROUP**  
**(CALPIRG)**

In April 1996, at the request of the Structural Pest Control Board, the State Attorney General filed a lawsuit charging Ecola Services, Inc., a Nevada pest control company doing business in California, with false and misleading advertising. This was followed by a second lawsuit against a company called Termite Inspector, also for false and misleading advertising. Both suits followed over two years of investigation concerning the use and sale to the public of alternative methods in lieu of a fumigation. The litigation covered nearly three years and cost the Board approximately \$500,000. In both cases the Board prevailed.

Through that process it became evident that there were also other problems with the advertising that companies were using as it related to pest control services. As the lawsuits were being prosecuted, the Executive Officer asked the Board Specialists to begin monitoring and providing the Office of the Attorney General copies of ads. Ads were secured from newspapers, magazines, airline magazines, flyers, apartment/condominium publications and many other sources. The intent was to determine if what if any violations were occurring and how best to deal with the issue. Clearly, not every seeming advertising infraction warranted filing a lawsuit, and the Board only had one very broad statute addressing the issue. Prosecuting through the civil process was long and difficult. Until the court decisions were rendered, the Board was not clear how to define "false and misleading."

While all of this was on-going, the Board also approached the Pest Control Operators of California, Inc. (PCOC) and it was in agreement that there were perhaps some advertising practices which needed to be addressed. Through publications, it discussed the lawsuits and spoke at its district industry meetings concerning the issue. The Executive Officer of the Board also spent time addressing the industry through district meetings concerning the issue. Indeed, the Deputy

Attorney General handling the lawsuits and working with the Board concerning the issue was the featured speaker at the industry's state convention.

While many companies had sought to deal with the issue, it became apparent that further definition of just what constituted "false and misleading" advertising was problematic. There was a broad statute that said "thou shall not false and mislead" through advertising, however, there were no guidelines spelling out the avenue of specifics for the industry to use. In mid-1998, the Board contacted several states to see what if anything they had implemented. The state of Texas had some, but they were deemed broad and not specific enough. It was determined that with the help and guidance of the Office of the Attorney General, the Board would move forward with crafting a defining regulation.

In November 1998, the Executive Officer was contacted by Zev Ross of the California Public Interest & Research Group (CalPirg) concerning the issue of pesticides in advertising. The Board spent a great deal of time with CalPirg outlining where it had been and where it was going concerning the issue of "false and misleading". Indeed, CalPirg was asked to talk with the Deputy Attorney General who had been involved from the beginning. They were also asked to contact the industry association to review what industry steps might have been taken. CalPirg did talk to all involved.

In December 1998, CalPirg held a press conference and painted a rather broad brush across 150 pest control companies claiming they were using deceptive advertising. In addition, CalPirg accused the Office of the Attorney General and the Board of being moot on the issue. It was difficult to understand how the organization could make such a charge in light of the conversations and information provided to them prior to their press conference.

CalPirg's charges became a focus during the 1999/2000 budget hearings. The Board, in a letter to Senator Polanco outlined what it would do to meet the concerns (see Appendix C). Action has been taken on every commitment made to the Budget Committee.

Working with the Office of the Attorney General, the Board completed a regulation (see Appendix D) which will provide for advertising guidelines as it relates to all methods used by the industry. Through the public hearing process, there was a great deal of contention. Attorneys for manufactures, companies and other interests fought a number of the provisions. The Board took the comments under advice and made changes deemed appropriate. It should also be noted that CalPirg objected both vocally and in writing indicating that the regulation as drawn, was too encompassing. The regulation (rulemaking file) should be submitted to the Office of Administrative Law in November

The Structural Pest Control Board has created a new staff position to work in conjunction with the Office of the Attorney General to monitor advertising and to refer violators for administrative action and/or other disciplinary action.

The Board believes it has acted responsibly and with deliberation concerning the issue. Defining what constitutes false and misleading advertising is a difficult task. The issues of fair competition, fairness and First Amendment rights must be considered. Some may say that the Board was too slow, however, the Board would respond that it has been judicious and methodical in dealing with issue. Further, the issue must include all forms of pest control advertising, not just the one which CalPirg singled out.

One last point should be made to illustrate the complexity of pest control advertising issue. CalPirg, following their press conference, decided to single out four or five companies in the north and four or five in the south and filed lawsuits in both jurisdictions. To date, concerning the case in the north, The Alameda Superior Court “sustained with leave to amend” Defendant’s (Pest Control Companies) demurrer to CalPirg’s second amended complaint. CalPirg filed a writ with the appellate court and in September the appeals court denied the writ.

In the south, Los Angeles Superior Court will hear Plaintiffs Second Amended Complaint (Set for October 5<sup>th</sup>). While there is no decision as of this writing, it is expected that the Defendant’s demurrer as in the north, will be sustained.

## PART 4.

### *BACKGROUND PAPER FOR HEARING*

## **STRUCTURAL PEST CONTROL BOARD (SPCB)**

### **IDENTIFIED ISSUES, BACKGROUND CONCERNING ISSUES, STAFF RECOMMENDATIONS AND QUESTIONS FOR THE BOARD**

**PRIOR SUNSET REVIEW:** The Structural Pest Control Board (SPCB) was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) three (3) years ago (1996-97). “Part 2” of the SPCB’s 1999 Sunset Report lists the issues and final recommendations reached by the JSLRC in 1997, and provides the SPCB’s updates and responses on those issues.

### **CURRENT SUNSET REVIEW ISSUES:**

#### **ISSUE #1. IS THE BOARD SATISFACTORILY RESPONDING TO CRITICISM THAT IT HAS FAILED TO PROTECT CONSUMERS AGAINST DECEPTIVE ADVERTISING BY PEST CONTROL COMPANIES?**

**BACKGROUND:** In December of last year the California Public Interest Research Group (CALPIRG) released a report titled “Toxic Fraud: Deceptive Advertising by Pest Control Companies in California.” The report indicated that licensed operators of pest control companies in California are violating federal and state laws that prohibit the advertising of pesticide treatments as safe and harmless. Federal law regarding the labeling of pesticides is codified in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The Act prohibits manufacturers from labeling pesticides as “safe,” “harmless,” or “environmentally friendly.” FIFRA also prevents direct and indirect safety claims and limits the use of qualifying phrases. The Federal Trade Commission’s “Guides for the Use of Environmental Marketing Claims,” advises businesses against making false and misleading claims regarding environmental benefits of pesticides. Violations of these guidelines are subject to legal action under Section 5 of the Federal Trade Commission Act. In addition, California’s Unfair Business Practices Act prohibits “unfair, deceptive, untrue or misleading advertising.”

In its research for the report, CALPIRG examined the yellow pages of 68 telephone directories

from communities throughout the state. CALPIRG estimates that the consumers reached by the selected directories totals nearly 24 million Californians, or 70% of the state's population. CALPIRG claims to have found "more than 350 deceptive advertisements from approximately 150 different pest control companies."

CALPIRG's charges became an issue during the 1999/2000 Senate Budget Subcommittee #4's hearings on the Board's budget. The Subcommittee indicated that the Board had taken some enforcement action against operators making false advertising claims regarding alternative pest control methods, but not for false or misleading *safety [or environmental]* claims. [Regarding the misleading or deceptive alternative (non-pesticide) pest control methods, the Board won two legal cases during 1998 with penalty awards totaling \$1.2 million. Following those decisions, the board sent out a letter to pest control licensees and news media warning against similar misleading advertising and provided some guidelines.]

The Budget Subcommittee also indicated that the Board had not taken disciplinary or legal action against licensees who violate FIFRA, nor had it referred any of those kinds of cases to the Attorney General's Office for legal action under the California Unfair Business Practices Act. It was pointed out that there may also be some confusion between which agencies (the Board, the State Department of Pesticide Regulation – DPR) or the County Agricultural Commissioners – CACs) should be citing or fining companies for deceptive or false advertising. [It should be noted that the Board's administrative citation and fine authority just became effective in January of 1999.]

The Board approved the following implementation plan and communicated it by letter to Senator Polanco, Chairman of Budget Subcommittee #4, on March 19:

- Send a letter to all pest control companies to inform them of the problem and consequences of false and misleading advertising, and ask them to review their advertising and make any necessary changes based on existing Federal and State law and guidelines.
- Send a separate letter to the 150 pest control companies named in the CALPIRG report to indicate their potential violation of law, and to have them make the necessary changes to avoid disciplinary action.
- Create regulatory guidelines to address false and misleading advertising.
- Prepare an article for the Board's April newsletter addressing the CALPIRG report and recommending that companies review their advertising.
- Create a liaison position between the Board, the Department of Pesticide Regulation (DPR) and the County Agricultural Commissioners (CAC) to help monitor company advertising.
- Continue work to eliminate any jurisdictional problems between DPR and the CAC concerning false and misleading advertising.

- Continue working with the industry trade association, Pest Control Operators of California (PCOC) to encourage pest control companies to come into voluntary compliance with the laws regarding false and misleading advertising.

It appears that the Board has taken certain steps to implement their plan for dealing with this issue.

**STAFF RECOMMENDATION:** *The Board should complete implementation of the plan it presented to the Senate Budget Subcommittee #4, including obtaining approval for adoption of specific regulations regarding illegal false or misleading advertising to enable the board to take effective enforcement action. The Board should notify the JLSRC regarding completion of the specified items or progress thereon, and the final approval of its proposed advertising regulations.*

**QUESTIONS #1 FOR THE BOARD:** *What efforts has the Board made to complete implementation of its plan to deal with the problem of deceptive advertising by pest control companies? What efforts will the Board take to provide guidance to licensees and the public regarding what kinds of advertising will comply with the proposed regulations? Will the Board give guidance or advice by telephone or mail regarding permissible or impermissible advertising and statements?*

## **ISSUE #2. COULD SOME OF THE BOARD'S 10 LICENSING EXAMS BE COMBINED, AND ARE THE EXAMINATION FEES ADEQUATE TO COVER THE COSTS OF ADMINISTERING THE BOARD'S EXAMS?**

**BACKGROUND:** The Board licenses three classes of licensees ("applicators," "field representatives," and "operators") in each of four branches of structural pest control – Branch 1/Fumigation, Branch 2/General Pest, Branch 3/Wood Destroying Organisms & Termites, and Wood Roof Cleaning and Treatment. There are no educational or experience requirements for applicators. There are no educational prerequisites for field representatives, but there are experience prerequisites that vary depending on the particular branch of pest control in which licensure is sought. And there are both educational and experience prerequisites for pest control operators. All three classifications must pass a different licensing examination.

The Board administers a different state-developed examination for almost every licensing category in each branch (10 exams total: 2 applicator, 4 field representative, and 4 operator.) There are no national examinations. The current examination fees are: applicators -\$15 (@ statutory maximum); field representatives - \$10 (\$15 is statutory maximum); and operators - \$25 (@ statutory maximum.) While the Board's revenues and fund condition are more than satisfactory, it is unclear whether the low exam fees actually cover the costs associated with developing and administering the related examinations and whether 10 separate examinations are necessary.

The Board indicates in its current sunset report that it has been reviewing the need to increase the examination fees. The Board states that the costs to administer the exams have increased, in part due to the cost to develop the recommended occupational analyses and to create new and validated exams. The Board cites as one example that it has determined the cost to administer the Field Representative exam is \$34.07, but the cost (fee) to the applicant is only \$10 (soon to be at the \$15 statutory maximum by Board regulation.)

**QUESTIONS #2 FOR THE BOARD:** *Is it necessary to provide ten separate licensing examinations or could some be combined? How often does the Board administer each of its examinations? Do the examination fees and application fees cover the full costs of providing examinations and processing applications, or do license or stamp fees supplement these costs?*

### **ISSUE #3. LOW PASSAGE RATES ON SOME OF THE BOARDS' EXAMINATIONS HAVE LED TO THE NEED FOR OCCUPATIONAL ANALYSES AND EXAMINATION VALIDATIONS.**

**BACKGROUND:** Occupational analyses and exam validations are critical components of appropriate and legally defensible licensure programs. Both types of reviews help the state ensure that the standards for entry into professions are consistent with the skills required in those professions. The need to perform an occupational analysis is even more critical now because of recent court decisions. The courts have established that in order to protect the civil rights of applicants for professional licensure, examinations used to assess competence must meet the test of "job-relatedness." According to the U.S. District Court, this standard requires periodic validation of each examination a candidate is required to take. While the courts have not specified a standard for periodic review, a recent California case, AMAE, et.al. vs. California Commission on Teacher Credentials, has indicated that an analysis performed five or more years prior does not provide a sufficient defense to its validity. Therefore, it would appear as if courts may now invalidate an examination if an occupational analysis has not been performed within five years, and will find it unrelated to current knowledge, skills, abilities necessary for the profession.

The low passage rates on the field representative exams have generated concerns that the board may be testing for more than the minimum competency needed to practice that profession – that the examinations do not test for the appropriate skills and knowledge. During the Board's previous sunset review in 1996, the JLSRC recommended that the Board conduct an occupational analysis of the structural pest control industry to ensure the validity of the Board's various licensing examinations. In 1997, the Board contracted with the Office of Examination Resources (OES) of the Department of Consumer Affairs (DCA) to conduct the occupational analysis and update all of the Board's licensing exams. The Board reports that the occupational analysis for Branch 2 (General Pest) has been completed and that the three Branch 2 license exams have been updated and validated. The Board's report indicates that occupational analyses in Branch 1 and Branch 3 are due to be completed by February 25, 2000, and that the related exams for those two branches are due to be updated and validated by June 16, 2000.



**STAFF RECOMMENDATION:** *The Board should complete the occupational analyses, exam validations and updating for all of its licensing exams – currently targeted for completion by 6/16/2000.*

**QUESTIONS #3 FOR THE BOARD:** *What efforts has the Board made to improve its licensing examinations? What is the current status of those efforts, and is the Board on track to complete its occupational analyses and validation of examinations by June of next year? How soon will passage rate data be available to determine the effect of updating the Board's exams?*

**ISSUE #4. VERY LOW AND HIGH PASSAGE RATES ON THE BOARD'S EXAMINATIONS RAISE CONCERNS WHETHER THE MINIMUM REQUIREMENTS FOR LICENSURE ARE ADEQUATE TO ASSURE THAT LICENSEES HAVE THE MINIMUM KNOWLEDGE AND SKILLS NECESSARY TO PERFORM COMPETENTLY.**

**BACKGROUND:** As noted previously, no education or experience is required to obtain an applicator license, only passage of a branch-related license exam. For a field representative license there is no educational requirement, but applicants must have some experience that varies depending upon the particular branch of pest control and must pass a branch-related license exam. And there are educational, experience, and license exam prerequisites for licensure as a pest control operator. Experience obtained as a field representative is used to qualify for the operator's license – the highest license level.

According to the Board's report, the average passage rate on its field representative examinations has been between 37% and 32% from 1995/96 to 1998/99. The average passage rates on its operator examinations have been between 29% and 24% during those same four years. And the average passage rates for its applicator examinations have been between 88% and 85%. While the low passage rates, particularly on the field representative license examinations, have led to concerns that the exam may be testing for more than minimum competency (thus the 1996 JLSRC recommendation for occupational analyses and exam validation) – there is also a concern that the low passage rates on the license exams may reflect a lack of basic knowledge of structural pest control and the laws related thereto. Given the existence of misleading and deceptive advertising (see #1 above) and "overcalling" (see # 7 below), this latter concern may well be valid.

The lack of educational prerequisites for the first two license levels (applicator and field representative) appears to place a heavy reliance on experience and passage of the license exam to assure minimum competence. It is unknown whether there is a significant problem with applicants repetitively taking a license exam prior to passage – possibly reflecting more on an ability to be familiar with exam questions rather than having the minimum knowledge and skills necessary to perform competently.

**STAFF RECOMMENDATIONS:** *The Board should review examination data for the past year and future exams to determine what percentage of examinees are repeat examinees and the number of repeat examinations taken by examinees. If the exam passage rates continue to be abnormally low after exams have been validated and updated, then the Board should determine whether additional experience or educational prerequisites may be needed to assure that examinees have the necessary minimum knowledge and skills necessary to perform competently. The Board should review information such as complaints and disciplinary information in determining whether such additional experience or education is necessary.*

**QUESTIONS #4 FOR THE BOARD:** *Does the Board have any information regarding whether or not license applicants may be inadequately trained or educated to perform competently in the various pest control job classifications? Has the Board considered increasing the experience or educational prerequisites for any of its licenses? Is there a problem with license applicants repeatedly taking license exams unsuccessfully? Has the Board considered limiting the frequency or the number of times a license applicant may unsuccessfully retake a license examination without obtaining remedial education or experience?*

#### **ISSUE #5. IT IS UNCLEAR WHETHER MANDATORY CONTINUING EDUCATION (CE) IMPROVES THE COMPETENCY OF PEST CONTROL LICENSEES.**

**BACKGROUND:** Pest control licenses are issued for three years. Continuing education has been a requirement for license renewal since 1981. Currently, all structural pest control applicators, field representatives, and operators must complete continuing education (CE) coursework requirements as specified by the Board regulation. As an alternative, applicators may take the applicator's license examination for their particular branch, while operators and field representatives may pass an exam administered by the Board that is designed to test the licensee's knowledge of developments in the field of pest control since the issuance of the licensee's license. The Board approves providers of CE courses and CE activities. The primary providers of CE are chemical companies and distributors, many of the larger pest control companies, and the University of California for correspondence courses. In 1996 there were 220 approved CE providers offering over 3500 CE activities, of which 2100 were actual educational courses.

The number of hours of CE required depends on the number of branches of pest control in which licenses are held. Generally, the requirements are for 16 hours for one branch, 20 hours for two branches, 24 hours for three branches or 28 hours for all four branches. Of those at least four hours must be in a technical subject directly related to each branch licensed, and a minimum of eight hours regarding structural pest control laws and regulations.

The Department of Consumer Affairs (DCA) conducted a study of mandatory CE in the 1980's and determined at that time that mandatory CE was not justified as it could not be shown to increase a particular licensee's competence. For many year thereafter, the DCA had a policy of

opposition to any new CE requirements for professional licensees.

During the Board's 1996 sunset review, it indicated that measuring the correlation between competency and continuing education is difficult. The Board noted at that time that nearly all aspects of pest control relate to the health and safety of the consuming public, and that new types of pest control methods and frequent changes in pest control laws and regulations continue to emerge. The Board also noted that one major criterion the Board uses for license reinstatements is whether the former licensee has kept up with the technological and legal changes since he or she last practiced.

**QUESTIONS #5 FOR THE BOARD:** *Is there any evidence that the required continued education for pest control operators and field representatives improves the competency of those licensees? Would the examination provided as an option to continuing education coursework be sufficient?*

**ISSUE #6. WHAT WILL BE THE IMPACT AND WHAT ARE THE BOARD'S PLANS FOLLOWING THE ELIMINATION OF THE CURRENT REQUIREMENT THAT ALL "INSPECTION REPORTS" AND "NOTICES OF WORK" COMPLETED BE FILED WITH THE BOARD?**

**BACKGROUND:** Pest control companies are required to physically file inspection reports and notices of work completed with the Board on a daily basis. As a result the Board receives and attempts to file some 8000 documents from pest control companies each day! During the previous sunset review of the Board IN 1996, it was determined that the Board was seriously backlogged in filing this mountain of paperwork. Since there are others (pest control companies, customers, lenders, etc.) who also receive copies of these reports anyway, the JLSRC at that time recommended elimination of the requirement that they be filed with the Board. This year, SB 1307 (B&P Committee bill) enacted the necessary statutory changes, effective January 1, 2000, that were required to eliminate the filing requirement and to implement a new program.

**QUESTIONS #6 FOR THE BOARD:** *What plan or methods will the Board now be using to ensure consumer protection, since inspection reports will no longer be collected? How much paperwork will the Board still have to process and file as a result of the new plan? How does the Board propose to manage and use that paperwork? How will the new plan affect the Board's revenues, since a significant portion of the Board's revenue comes from fees charged for stamps that are placed on each Inspection Report and on each Notice or Work Completed?*

**ISSUE #7. CONCERNS HAVE BEEN RAISED REGARDING EITHER EXCESSIVE OR INCOMPLETE INSPECTION EFFORTS, RECOMMENDATIONS AND CORRECTIVE WORK BY PEST CONTROL COMPANIES.**

**BACKGROUND:** During the Board's prior sunset review, concern was expressed that despite a

change in the law that prohibited licensees from recommending or performing corrective work in excess of that necessary to fix a problem, there was still potential for abuse by unscrupulous licensees. The JLSRC at that time recommended that the Board monitor the amount of corrective work recommended by licensees for home repairs to ensure that such work was directly related to problems properly identified during inspections.

Since that time, the Board has monitored this issue and has found that rather than excessive work being recommended and performed (so-called “over-corrective” findings/work or “over-calling”) the Board has found the problem to be “under-calling” or the failure to identify problems in need of correction during an inspection. This can lead to a situation where a home buyer moves in only to discover structural pest control problems that were not identified in the pest control report that was done for the seller prior to sale nor corrected thereafter prior to sale. The Board reports that problems and examples of “under-calling” are mirrored over and over again through the Board’s complaint process.

**QUESTIONS #7 FOR THE BOARD:** *How is the Board monitoring the competency of pest control inspections and resultant corrective work to determine the existence of “under-calling” or “overcalling.” What steps (e.g., discipline? licensee education?) are being taken by the Board to reduce this problem? Are there any other problems associated with inspections or services being performed by pest control companies, and if so, what steps is the Board considering or taking to resolve them?*

**ISSUE #8. COORDINATION OF ENFORCEMENT EFFORTS BY THE BOARD, THE DEPARTMENT OF PESTICIDE REGULATION (DPR) AND THE COUNTY AGRICULTURAL COMMISSIONERS (CACs) HAS BEEN A PROBLEM.**

**BACKGROUND:** The Department of Pesticide Regulation (DPR) has primary responsibility for regulating all aspects of pesticide sales and use. The DPR, and local county agricultural commissioners (CACs) under the direction of the Director of DPR, are responsible for enforcing the Food and Agricultural Code provisions and regulations issued pursuant to those provisions regarding the sale and use of pesticides. The Board is responsible for regulating the practice of structural pest control by the provisions of the Business and Professions Code – including licensing, conducting investigations and taking administrative disciplinary action. The CACs are designated to be the lead agents for conducting inspections and routine investigations of pesticide use by structural pest control operators at the local level.

In the past the Board has been frustrated by the lack of effective coordination between each of these three entities, and found three problems: lack of communication, lack of training for CAC investigators concerning enforcement of structural pesticide use as required by law, and no accountability for the funding provided by the Board. A working group was established to resolve these and other problems leading to development of a new accounting process, re-implementation of a training program for local CAC investigators, acquisition of a staff person to coordinate activities between the Board and the DPR (in the 1999/2000 FY SPCB Budget), and

development of a new Memorandum of Understanding (MOU) between the Board, DPR and the CACs.

**QUESTIONS #8 FOR THE BOARD:** *How does the Board interact with other state agencies (e.g. Department of Pesticide Regulation, Department of Real Estate) to ensure adequate protection of consumers? Is the new MOU between the Board and DPR working? Has coordination and communication between the Board, DPR and the CACs improved significantly? What effects have the changes made as a result of the working group produced? Are they quantifiable? Do problems still exist? If so, how will the Board plan to address them?*

#### **ISSUE #9. IS THE BOARD SPENDING A SUFFICIENT AMOUNT OF ITS BUDGET ON ENFORCEMENT?**

**BACKGROUND:** By licensing persons who offer structural pest control services, California has exercised its inherent police powers to protect the public's health, safety and welfare. The purpose is to ensure that those services are provided by persons who have at least minimum competency. In addition to initial licensure, one critical component of such a licensing program is its effectiveness in taking appropriate enforcement action when licensees fail to perform properly.

The Board employs about 27 employees and licenses approximately 25,000 structural pest control licensees. The Board has about 27 employees. The Board noted in its previous sunset review that out of total expenditures of \$2,799,994, it spent \$1,709,050 or approximately 61% on enforcement-related activities vs. \$1,090,944 or 39% for examinations and licensing. The current sunset report states that the Board spends the "majority" of its operating budget on enforcement-related activities (53%,) followed by 22% for administrative functions, 21% for licensing functions, and 4% on its exam-related activities. While this would appear to reflect a drop in the enforcement component of the Board's activities, it is not clear what portion of the Board's "administrative" and personnel costs are attributable to enforcement-related activities.

The Board has more than sufficient reserves in its fund should it need additional resources for enforcement. The Board states that its fund "reserve" (in number of months of operation) was 15.3 months at the end of FY 98/99, and is projected to be 13.3 months by the end of FY 02/03 in spite of several reductions in the pest control stamp fees which provide the bulk of the Board's revenues. Generally, the recommended guideline for fund reserves is around 6 months budget, though the Board states that over the past four years it has received recommendations of from 3 months reserve to 12 months reserve from the Department of Consumer Affairs.

**QUESTIONS #9 FOR THE BOARD:** *What percentage of the Board's budget is expended on enforcement? Is this sufficient or does the Board need additional resources or statutory authority to properly enforce provisions of the structural pest control laws? Since the Board's fund reserves average about 12 months, should they be used to increase the board's enforcement? If not, does the Board plan to reduce its fund reserves in the future?*

**ISSUE #10. IT IS UNCLEAR WHY THE BOARD MAINTAINS FOUR SEPARATE FUNDS WITH ITS BUDGET.**

**BACKGROUND:** The Board has four different funds: the Support Fund (main fund), the Education & Enforcement Fund, the Research Fund, and the Device Fund. The primary source of revenue for the Board's four funds is through the sale of stamps that must be placed on every pest control inspection report and every notice of work completed submitted to the Board. Because of increasing revenues and fund reserves, the Board reduced fees for the "Inspection Report" and the "Notice of Work Completed" as a means of reducing the reserve level in its Support Fund.

The Support Fund is the primary fund for the Board's operations, with projected revenues of \$3,144,964 (\$2, 556,331 in stamp fees, \$363,629 in licensing fees, \$30,000 in fines and penalties, and \$195,004 in interest.) The Education and Enforcement Fund is projected to have revenues of approximately \$253,833 for FY 99/00, most of which comes from \$4 taken out of the \$6 fee charged for each pesticide use stamp purchased from the Board. Projected expenditures are \$274,000 in FY 99/00. The Research Fund is projected to have revenues of \$117,277, and expenditures of \$1,500 in FY 99/00. (However, this fund builds up over time, which leads to much larger expenditures on research contracts every third year or so.) Revenues for the Research Fund come from the remaining \$2 left from the \$6 pesticide use stamp fee charged by the Board. The Device Fund was created by legislation sponsored by the Pest Control Operators of California, Inc. and became effective January 1, 1999, and is due to sunset effective January 1, 2002. It is funded from an additional twenty five cent (\$0.25) fee charged for each Inspection Report and Notice of Work Completed stamp purchased from the Board. Revenues for the Device Fund are projected to be \$461,355 annually. The Department of Pesticide Regulation (DPR) has continuous appropriation authority for all of the funds received into the Device Fund for expenditure related to the registration and regulation of pest control "devices" (rather than just pesticides and commercial pesticide users.)

The number of different funds, the different purposes and the different or shared sources of revenue for each seems more complex than is generally the case for most licensing boards or programs.

**QUESTIONS #10 FOR THE BOARD:** *Why does the Board maintain four separate funds within their budget? Could they be combined?*

**ISSUE #11. SHOULD THE STRUCTURAL PEST CONTROL BOARD CONTINUE TO BE THE AGENCY TO ADMINISTER THE LICENSING AND REGULATION OF STRUCTURAL PEST CONTROL LAWS OR SHOULD THE BOARD BE SUNSETTED, WITH ADMINISTRATION OF THOSE LAWS TRANSFERRED TO THE DEPARTMENT OF CONSUMER AFFAIRS?**

**BACKGROUND:** SB 2036, McCorquodale – Chapter 908, Statutes of 1994 created the Joint Legislative Sunset Review Committee (JLSRC), and subjects the various independent or semiautonomous licensing boards of the Department of Consumer Affairs (DCA) to “sunset” review by the JLSRC. Pursuant to this law, the laws authorizing these licensing boards become inoperative and are subsequently repealed according to a specified schedule, and its administrative responsibilities are transferred to the DCA, unless legislation is enacted to extend or repeal the “sunset” dates. The purpose of this law was to enable the Legislature to evaluate and determine whether there is an ongoing public need for the continued existence of a state licensing or regulatory program, whether the particular agency administering the program is doing so effectively, and whether the degree of continued regulation is justified.

The Structural Pest Control Board was created in 1935, ostensibly to protect the health and welfare of both the consumer of structural pest control services and of those individuals employed in the industry. During the 1996-97 sunset review of the Board, the JLSRC reached the conclusion that both the field of structural pest control and its regulation by the Board should be continued. Inherent in that conclusion was the belief that the Board was performing its administrative responsibilities well or better than any reasonable alternative, and that transfer of the program to be administered directly by the Department of Consumer Affairs without an appointed Board was not warranted.

However the JLSRC did make several recommendations for this Board. They included: 1) revision of the Board’s mission statement to more appropriately focus on consumer protection; 2) having occupational analyses conducted and then updating and validating the licensing examinations; 3) having the Board more closely monitor the amount of corrective work recommended by licensees to ensure that it is directly related to the findings of an inspection; 4) authorizing the Board to directly contract with the county agricultural commissioner for local enforcement rather than doing so through the Department of Pesticide Regulation; and 5) having the Board increase the number of unannounced inspections of licensees to ensure that required records are being maintained.

Whether or not to continue having the structural pest control laws administered by the Board rather than by another agency would seem to depend on how responsive the Board has been to the Legislature’s previous findings and recommendations, and the overall effectiveness of the Board to protect the public affected by structural pest control services.

**QUESTIONS #11 FOR THE BOARD:** *Why should this Board be continued? Summarize what changes have been made to the current regulatory program since its last review to improve its overall effectiveness and efficiency so that it may operate more in the public interest. Why couldn’t a bureau under the Director of the Department of Consumer Affairs, with an advisory committee from the profession, administer this licensing program more effectively and efficiently than the current Board?*